AMITA BAMAN TRACY, Administrative Law Judge. In January 2020, without objective evidence, Nexstar Broadcasting, Inc. d/b/a KOIN-TV (Respondent or Nexstar) withdrew recognition from the National Association of Broadcast Employees & Technicians (NABET), the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (the Union) after they had represented employees for 15 years at its television station in Portland, Oregon. Respondent’s withdrawal of recognition was the end point of two and a half years of bargaining for a successor collective-bargaining agreement. Although the parties reached tentative agreements the first one and a half years of bargaining, negotiations grinded to a halt in 2019. Nexstar took a take-it-or-leave it attitude during bargaining while refusing to provide the Union information or presenting counterproposals. Away from negotiations, Nexstar issued memos denigrating and undermining the Union to the employees it represented.

Even prior to 2019, Nexstar had been found by the National Labor Relations Board (the Board) to have violated the National Labor Relations Act (the Act) numerous times during the course of bargaining for the successor agreement by refusing to provide information to the Union, by making changes to employees’ working conditions without bargaining with the Union, and by disciplining an employee representative on the negotiation team. Ultimately, the totality of the circumstances at and away from the bargaining table persuades me to find that rather than engaging in lawful hard bargaining, Respondent engaged in unlawful surface bargaining.
In addition, Respondent enacted several changes to bargaining unit employees’ working conditions before and after withdrawing recognition from the Union. Immediately upon withdrawing recognition from the Union, Respondent notified the employees that they would be given a long-awaited wage increase in the future. Thereafter, 3 months later, the bargaining unit employees were given this wage increase, but prohibited from discussing the wage increase and threatened with rescission of the wage increase if they did discuss the subject. Respondent prohibited the distribution of union bulletins and prohibited employees from discussing the Union in the workplace. Respondent’s course of conduct calls for an affirmative bargaining order as Respondent’s “substantial unfair labor practices have infected the core of a bargaining process to such an extent that their ‘effects cannot be eliminated by the application of traditional remedies.’” *Bemis Company, Inc.*, 370 NLRB No. 7, slip op. at 5 (2020) (citing *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 614 (1969) (citations omitted)).

**STATEMENT OF THE CASE**

This case was tried by videoconference from November 12 through 18, 2020. The Union filed the charge in Case 19–CA–248735 on September 23, 2019, and amended charge on April 23, 2020; in Case 19–CA–255180 on January 24, 2020; in Case 19–CA–259398 on April 21, 2020, and amended charges on June 5, 2020 and July 30, 2020; and in Case 19–CA–262203 on June 25, 2020. On September 18, 2020, the General Counsel issued an order consolidating these cases, the second consolidated complaint and notice of hearing. Respondent filed a timely answer to the second consolidated complaint denying all material allegations.

In the complaint, the General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by:

1. Since about March 23, regularly defaming and denigrating the Union to the bargaining unit employees via its bargaining update memos to those employees;

2. Since about March 23, and specifically in May and July, failing to meet and bargain with the Union for a successor to the expired collective bargaining agreement (CBA) without explanation;

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1 On October 23, 2020, I issued an order directing that this trial be conducted by videoconference due to the ongoing Coronavirus Disease 2019 (Covid-19) pandemic. None of the parties objected to conducting the trial by videoconference.

2 All dates are in 2019 unless otherwise specified.

3 Prior to the hearing, the Region 19 Regional Director of the National Labor Relations Board (the Board) and the Union entered into a unilateral settlement of the following unfair labor practice which had been consolidated into this matter: case 19–CB–244300 (concerning the Union’s refusal to provide information requested by Respondent on June 26 regarding the dues checkoff and authorization provision). Ultimately, the Regional Director approved a unilateral settlement of case 19–CB–244300 along with cases 19–CB–248966 (concerning the Union’s refusal to provide information requested by Respondent on August 15 regarding the Union sponsored benefit plans such as health and welfare) and 19–CB–257037 (concerning, in part, the Union’s February 27 welcome packet and letter to bargaining unit employees). Respondent appealed the unilateral settlement, but on December 16, 2020, the General Counsel denied Respondent’s appeal (JX 68). On December 22, 2020, the parties filed a joint motion to reopen the record to including the December 16, 2020, denial of Respondent’s appeal by the General Counsel (JX 68). I granted this motion and reopened the record to include this letter.
(3) Since about March 23, and specifically in January 2020, failing and refusing to meet at reasonable times and/or places for bargaining wherein on about January 8, 2020, cancelling bargaining sessions scheduled for January 23 and 24, 2020, and on January 14 and 15, 2020, double-booking its representatives for bargaining in another state on the same date despite agreeing to meet with the Union;

(4) Since on or about April 24, failing and refusing to bargain about health insurance as requested by the Union on about April 24 and from April 24 to December, delaying responding to the Union’s proposal on health insurance for employees;

(5) By its overall conduct since about June 21, 2017, failing and refusing to bargain in good faith by engaging in bargaining with no intention of reaching agreement (surface bargaining), insisting upon proposals predictably unacceptable to the Union, refusing to meet at reasonable times and/or places for bargaining, conditioning negotiations on non-mandatory subjects of bargaining, and denigrating the Union in the eyes of the employees;

(6) In or around late-November and early-December, assigning bargaining unit work of shooting video at Portland Trailblazers games to non-bargaining unit individuals;

(7) On or about January 7, 2020, changing its vacation policy without prior notice to the Union and/or without affording the Union an opportunity to bargain to an overall good-faith impasse;

(8) On or about January 8, 2020, withdrawing its recognition of the Union as the exclusive collective-bargaining representative of the bargaining units;

(9) On or about January 8, 2020, removing the union bulletin boards at the facility;

(10) Announcing that bargaining unit employees would receive a 1.5% wage increase and implementing the 1.5% wage increase for bargaining unit employees in or about late-March to early-April 2020; and

(11) In or about April 2020 assigning bargaining unit work of setting up Respondent’s morning television program to a non-bargaining unit individual without prior notice to the Union and/or without affording the Union an opportunity to bargain to an overall good-faith impasse.

The complaint also alleges Respondent violated Section 8(a)(1) of the Act by:

(1) On January 20, 2020, director of technology Rick Brown (Brown), in the newsroom, telling employees that they should not talk about the Union;

(2) On January 23, 2020, Brown, in the newsroom, telling employees they could not hand out union bulletins because Respondent no longer recognizes the Union;

(3) On June 25, 2020, Brown, during a Zoom call with an employee, instructing the employee not to discuss wages and wage increases; and
(4) On June 25, 2020, Brown, during a Zoom call with an employee, making an implied threat to revoke wage increases if employees discussed their wage increases with each other.¹

Related Litigation During Negotiations for a Successor Collective-Bargaining Agreement

During bargaining for the successor CBA, Respondent and the Union have filed numerous unfair labor practices with the Board (JX 66). Several of these matters were cited by the General Counsel in the second consolidated complaint at paragraph 7. These include 367 NLRB No. 117 (2019) where the Board found that Respondent in 2017 violated Section 8(a)(5) and (1) of the Act when failing, refusing and unreasonably delaying providing information to the Union regarding graphics work and when graphics work would return to the facility which was necessary to perform its bargaining duties for the successor CBA. The Board also found that Respondent violated Section 8(a)(5) and (1) of the Act when making unilateral changes in 2017 and 2018 to the terms and conditions of employment of bargaining unit employees after the CBA expired. 369 NLRB No. 61 (2020) (citing NLRB v. Katz, 369 U.S. 736 (1962) (an employer has a duty to maintain the status quo once a labor contract expires wherein the obligation is derived from the Act, not the labor contract) and Litton Financial Printing Div. v. NLRB, 501 U.S. 190, 206 (1991) (“[T]erms and conditions continue in effect by operation of the NLRA. They are no longer agreed upon terms; they are terms imposed by law)). These unilateral changes included the implementation of an annual driver-background check and changing when work schedules are posted. On January 7, 2021, the Board held that Respondent violated Section 8(a)(3) and (1) of the Act when Respondent failed and refused to furnish requested information and unlawfully issued a written warning to union representative and negotiating team member Ellen Hansen (Hansen) on July 12, 2018. 370 NLRB No. 68 (2021). Finally, on January 14, 2021, the Board affirmed my decision that Respondent violated Section 8(a)(5) and (1) of the Act in 2018 by failing and refusing to provide information related to dues checkoff processing costs.⁵ 370 NLRB No. 72 (2021). In that decision, the Board noted,

We deny the Charging Party’s request for various extraordinary remedies, as there has been no showing that the remedies the Charging Party requests are warranted. We note, however, that this case marks the fourth time the Respondent has been found to have violated the Act in less than two years. See 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

¹ At the start of the hearing, Counsel for the General Counsel motioned to amend the second consolidated complaint at paragraph 4, which I granted (Tr. 16–17, 203). Also, at the hearing, the Counsel for the General Counsel motioned to withdraw paragraphs 9 and 11 from the second consolidated complaint per the direction of the General Counsel (Tr. 17). Initially, I granted the General Counsel’s motion but on further reflection during the hearing informed the parties that my ruling on the motion would be addressed in this decision (Tr. 203–208). After full consideration of the parties’ arguments in the post hearing briefs as well as arguments during the hearing, I now grant the General Counsel’s motion and accept the withdrawal of paragraphs 9 and 11 from the second consolidated complaint.

⁵ I take judicial notice of these Board decisions. I also note that Administrative Law Judge Mara Louise-Anzalone found that the Union violated Section 8(b)(3) of the Act by failing and refusing to provide requested information concerning wage, severance pay and discrimination harassment proposals to KOIN-TV. 2020 WL 1156844 (March 10, 2020). That decision was adopted by the Board as no exceptions were filed.
Section 10(j) Injunctive Relief

On March 29, 2021, the Federal District Court for the District of Oregon, Portland Division issued an order granting preliminary injunctive relief under Section 10(j) of the Act, enjoining Respondent from failing and refusing to recognize the Union and to bargain collectively and in good faith with the Union, withdrawing recognition from the Union in the absence of a demonstrated showing that the Union lost its majority status, unilaterally changing the bargaining units’ terms and conditions of employment, including by granting any wage increase and removing the union bulletin board without providing prior notice and a meaningful opportunity to bargain, assigning bargaining unit work to non-bargaining unit members, promising and granting benefits, including a wage increase, to discourage Section 7 activity, prohibiting employees from discussing the Union and their wages, prohibiting distribution of union literature, and threatening to revoke a wage increase for engaging in Section 7 activity. Hooks v. Nexstar Broadcasting, Inc. d/b/a KOIN-TV, 2021 WL 1289750 (D. Or. 2021). Pending final disposition of this matter before the Board, the court ordered Respondent, inter alia, to immediately recognize and, upon request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the bargaining units; rescind, upon request from the Union, any or all changes to the bargaining units’ terms and conditions of employment that were made without first bargaining with the Union; within 10 days of the court’s order hold one or more mandatory employee meetings, on work time and during times when Respondent customarily holds employee meeting and scheduled to ensure widest possible employee audience read, by a responsible Respondent official in the presence of a Board agent or by a Board agent in the presence of a responsible Respondent official, the court’s order to bargaining unit employees; and post copies of the court’s order where notices to employees are customarily posted.

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

\[6\] I note that my findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom. A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Double D Construction Group, 339 NLRB 303, 305 (2003); Daikichi Sushi, 335 NLRB 622, 623 (2001) (citing Shen Automotive Dealership Group, 321 NLRB 586, 589 (1996)), enf’d. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. Daikichi Sushi, 335 NLRB at 622. I will set forth specific credibility resolutions within the findings of fact.

\[7\] Abbreviations used in this decision are as follows: “Tr.” for transcript and L. for line; “JX” for joint exhibits, including partial stipulation of facts; “GC Ex.” for the General Counsel’s exhibits; “R Exh.” for Respondent’s exhibits; “GC Br.” for the General Counsel’s brief; “CP Br.” for the Charging Party’s brief; and “R Br.” for
FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent, an Oregon corporation with an office and place of business in Portland, Oregon, operates a television station (the facility). During the 12-month period ending December 31, 2019, Respondent derived gross revenues in excess of $100,000, and purchased and received at the facility goods valued in excess of $50,000 directly from points outside the State of Oregon. The parties admit and I find that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

Respondent’s brief. Although I have included some citations to the record, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record. The transcript included errors as follows: Tr. 5, L. 8: ‘Anita Bamon’ should be “Anita Baman”; Tr. 21, L. 13: the word ‘see’ is omitted; Tr. 24, L. 9: ‘CA’ should be “8(a)”; Tr. 25, L. 25: “was due recognition” should be “withdrew recognition”; Tr. 26, L. 13: “removed” should be “removing”; Tr. 122, L. 18: “AB” should be “8(b)”; Tr. 126, L. 17: “service of” should be “surface”; Tr. 131, L. 12: “8D” should be “8(b)”; Tr. 135, L. 24: the speaker is not “Ms. DeVleming” but rather “Ms. Biggs-Adams”; Tr. 138, L. 16: “asked” should be “ask”; Tr. 139–140, L. 25, L. 3: “the speaker is not “Mr. Schiff” but rather the “court reporter or Ms. Metoyer”; Tr. 144, L. 21 and Tr. 145, L. 10: the speaker is not “Ms. Yen” but rather “Judge Tracy”; Tr. 145, L. 9: the speaker is not “Judge Tracy” but rather “Ms. Yen”; Tr. 153, L. 6; Tr. 154, L. 5; Tr. 172, L. 21; Tr. 324, L. 7: the speaker is not “Ms. DeVleming” but rather “Judge Tracy”; Tr. 179, L. 3: to should be “too”; Tr. 204, L. 21: “CV” should be “CB”, Tr. 266, L. 8: “Joint Exhibit 15” should be “Joint Exhibit 50”; Tr. 273, L. 25: “He’s – he’s” should be “She’s – she’s”; Tr. 350, L. 5: “M@” should be deleted; Tr. 93, L. 23: “plants” should be “plans”; Tr. 412, L. 19, Tr. 435, L. 1: “co-counsel” should be “co-counsel”; Tr. 464, L. 10-15: the speaker is “Judge Tracy” not “The Witness”; Tr. 561, L. 23: “young” should be “family”; Tr. 585, L. 1, 9: “Perry” should be “Carrie”; Tr. 612, L. 9: “sited” should be “cited”; Tr. 618, L. 7: “dignify me” should be “demeanor”; Tr. 68, L. 9: “back” should be “Beck”; Tr. 624, L. 6 and 10, Tr. 631, L. 4, Tr. 658, Tr. 659, L. 23: “AB 5” should be “8(b)(5)”; Tr. 652, L. 11: “leads” should be “least”; Tr. 744, L. 1: “Winger” should be “Wenger”; Tr. 749, L. 9: “were” should be “where”; Tr. 782, L. 20: “rogatory” should be “derogatory”; Tr. 757, L. 11: the speaker should be “Ms. DeVleming” not “Mr. Davis”; Tr. 786, L. 10: “he” should be “the”; Tr. 790, L. 24: “Works” should be “Wicks”; Tr. 796, L. 1: “she” should be “you”; Tr. 797, L. 10: “how” should be “how”; Tr. 824, L. 2: “Mr. Fleming” should be “Ms. DeVleming”; and Tr. 839, L. 18: “DCX” should be “GCX.” In addition, the use of video conference technology has been a necessary temporary adjustment due to the COVID-19 pandemic but transmission issues resulted in many instances of audio interference, technological problems, simultaneous speaking, and other sounds such as dog barking, street cleaners, and landscape equipment (Tr. 42, 50, 57–59, 66, 71, 79, 82, 89, 94, 96–97, 103, 105, 106, 115, 162, 173, 179, 191, 216, 231, 234, 236, 251, 255, 264, 272, 295, 296, 308, 310, 319, 322, 328, 333, 335, 341, 351, 359, 360, 365, 371, 397, 407, 412, 437, 447, 455, 458, 462, 464, 470, 484, 540, 549–551, 556–559, 596–597, 603, 607, 609, 610–611, 614, 616, 621–623, 631, 634, 637, 639, 644, 646, 647, 656, 664, 665, 666, 667, 686, 690, 692, 697, 702, 706, 724, 744, 746, 751, 753, 757, 762, 763, 768, 774, 789, 805, 814, 820, 822, and 827). Finally, the transcript incorrectly indicates that Ellen Hansen, Robert Dingwall, Matthew Rashleigh, Charles W. Pautsch, Lisa Newell, Casey Wenger, Douglas Key, Patrick Nevin, Rick Brown, and Carrie Biggs-Adams testified via telephone (Tr. 435, L. 20, Tr. 494, L. 4, Tr. 528, L. 19, Tr. 567, L. 21, Tr. 683, L. 10, Tr. 728, L. 10, Tr. 740, L. 20; Tr. 779, L. 16, Tr. 806, L. 4; Tr. 836, L. 14; and Tr. 845, L. 23). All witnesses as well as counsel and the judge appeared via Zoom video technology, not telephonically. I observed all witnesses as they faced the camera but could only observe them from the neck up.
II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent’s Organization

On or about January 17, 2017, Respondent purchased the business of LIN Television Corporation, a Media General Company, d/b/a KOIN-TV (KOIN-TV), and since then has continued to operate the business of KOIN-TV in basically unchanged form, and has employed a majority of individuals who were previously employees of KOIN-TV. Respondent has continued as the employing entity and is a successor to KOIN-TV. Nexstar’s corporate headquarters is in Irving, Texas (Tr. 570). After its various acquisitions and mergers in the past few years, Nexstar owns and operates close to 200 local television stations in markets across the United States; almost 20 of these markets are unionized with over 40 CBAs (Tr. 570–573). Approximately 120 employees work for Respondent at the facility.

B. The Collective Bargaining Relationship with the Union

At all material times until January 17, 2017, the Union has been the exclusive collective-bargaining representative of the following units employed by Respondent and, during that time until January 8, 2020, recognized as the representative by Respondent. Within the meaning of Sec. 9(b) of the Act, the following description of employees, of which there are approximately 40 to 43, comprise bargaining units (the Units) for the purposes of collective bargaining:

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 chief engineer, office clericals, professionals, 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 (aka “performer”), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV (Tr. 48–50). As of January 8, 2020, the record reflects that there were approximately 27 bargaining unit employees in Unit 1, and approximately 11 bargaining unit employees in Unit 2, although there was a minor discrepancy as to who should be included in these numbers (R Exh. 4; Tr. 848–949).

This recognition was embodied in successive collective-bargaining agreements, beginning in 2005, the most recent of which was in effect from July 29, 2015 to July 28, 2017, with the last extension having expired in September 2017 (expired CBA) (JX 1; Tr. 316–317). Biggs-Adams testified that since the Union had negotiated a comprehensive CBA only 2 years prior with the former owners of KOIN-TV, the Union opined that negotiations should be focused on specific articles rather than the entire CBA. Biggs-Adams stated that negotiations with the prior owners of KOIN-TV were difficult at the start of bargaining, but negotiations improved as time passed (Tr. 315). During the prior negotiations, Biggs-Adams testified that healthcare was a contentious issue (Tr. 315–316). Respondent, as a new owner, sought to renegotiate most, if not all, the articles in the expired CBA.
C. The Course of Bargaining for a Successor Agreement: June 2017 to December 2019

Between June 2017 and December 2019, Respondent and the Union met for successor contract bargaining on 42 total dates (21 sets of two consecutive dates) (Tr. 441). These dates are in 2017: June 21 and 22; August 17 and 18; September 7 and 8; October 12 and 13; and November 30 and December 1; in 2018: January 9 and 10; February 15 and 16; March 22 and 23; May 3 and 4; June 21 and 22; August 8 and 9; September 11 and 12; October 15 and 16; November 26 and 27; and December 13 and 14; in 2019: January 24 and 25; April 23 and 24; June 26 and 27; August 15 and 16; October 8 and 10; and December 9 and 10 (JX 1). In other words, in 2017 and 2018, the parties met almost monthly for 2 consecutive days due to the need for travel. However, in 2019, the parties met half as many times as they had met in the prior one and a half years (Tr. 319–320).

During these bargaining sessions, associate counsel, Vice President of Labor Relations Charles W. Pautsch (Pautsch) (who began working in-house for Respondent on January 1), President Tim Busch (Busch) (who participated from June 2017 through January 1), Vice President and General Manager Patrick Nevin (Nevin); Business Administrator/Human Resources Representative Casey Wenger (Wenger); Director of Technical Operations Rick Brown (Brown), and News Director Rich Kurz (Kurz) represented Respondent, and Pautsch served as lead negotiator (Tr. 57–60, 441, 569, 573–574). Union President Carrie Biggs-Adams (Biggs-Adams), employee representative Ellen Hansen (who began participating on October 12, 2017), and the Union’s attorney Anne Yen (Yen) (who only participated during the August 15 and 16 bargaining sessions) represented the Union, and Biggs-Adams served as lead negotiator and Hansen served as notetaker (Tr. 45–46, 55, 440–441). A Federal Mediation and Conciliation Service (FMCS) mediator joined the parties for bargaining session beginning on March 22, 2018 (JX 1).

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8 Nevin worked for Respondent from January 2017 until June 2020 (Tr. 781).
9 Wenger retired from Respondent on November 15, and Lisa Newell (Newell) replaced him as business administrator (Tr. 743).
10 Respondent admitted, and I find that Pautsch, Busch, Nevin, Wenger, Brown, and Kurz are supervisors of Respondent within the meaning of Sec. 2(11) of the Act and/or agents of Respondent within the meaning of Sec. 2(13) of the Act.
11 Hansen has worked at KOIN-TV since 1993 as a photographer, editor, live truck operator and live shot operator (Tr. 439). Prior to COVID-19, Hansen would work at the facility, but now works at home Monday to Friday 10 a.m. to 6:30 p.m. Hansen’s supervisor is Brown, and he has been her supervisor for at least 15 years (Tr. 439). Hansen has been a member of the Union since 2005 where she serves on the Union’s executive board as well as negotiating team (Tr. 440).
12 During the first couple years of bargaining, other bargaining unit employees including Brian Watkins (Watkins) represented the Union at the bargaining table along with Biggs-Adams. However, these individuals only briefly represented the Union during bargaining (Tr. 56–57). Nevin testified that Watkins declined to continue bargaining on behalf of the Union after an alleged incident between Busch and Biggs-Adams, but such testimony is hearsay and will not be credited (Tr. 788–789).
13 Biggs-Adams testified that when the mediator was suggested by Respondent in late 2017, she believed it was premature to bring in a mediator, whose schedule would also need to be coordinated with the parties (Tr. 172, 416–417). The Union, though, did not oppose the inclusion of a mediator. In contrast, Pautsch testified that the parties agreed that bargaining was not going well with personality conflicts and failure to reach more tentative agreements (Tr. 582–583). Ultimately, Pautsch admitted that Respondent requested the involvement of a mediator (Tr. 583).
Both lead negotiators for the Union and Respondent have many years of experience bargaining CBAs. Pautsch testified that he has bargained several hundred CBAs over the course of his career (Tr. 570). Prior to working in-house for Nexstar, Pautsch negotiated on behalf of Respondent since 2010 (Tr. 570). Pautsch testified that from 2017 to 2019, he negotiated 10 to 12 CBAs simultaneously on behalf of Nexstar (Tr. 577–578). Biggs-Adams testified that she bargained several CBAs on behalf of the Union with Nexstar, and previously bargained 5 CBAs with KOIN-TV (Tr. 46–47). In 2019, the only CBA she was negotiating was that of KOIN-TV (Tr. 326–327). In sum, Biggs-Adams testified that she has negotiated approximately 50 CBAs in her career (Tr. 313). Furthermore, she testified that generally labor negotiations can be difficult, contentious, and emotional with angry outbursts not unusual (Tr. 313).

In scheduling negotiations for a successor CBA, Biggs-Adams testified that due to the difficulty in securing meeting space for bargaining, in the first day of bargaining, the Union would attempt to schedule bargaining two sessions in advance (Tr. 51–52, 321–322). Biggs-Adams testified that her point of contact for scheduling bargaining sessions was Wenger, who was cooperative in her interactions with him (Tr. 325–326). Biggs-Adams also testified that coordinating the schedules of both parties, along with the mediator, and finding meeting space proved challenging (Tr. 329, 331, 416). The parties divided the costs for the meeting rooms. Bargaining sessions were scheduled to start at 9 a.m., and, at least on the first day of bargaining, end between 4 and 5 p.m. (Tr. 53–54, 442). On the second day of bargaining, sessions would end earlier in the day, depending on the travel plans of the negotiators as Biggs-Adams traveled from San Francisco, California while Pausch traveled from Irving, Texas (Tr. 442). Pautsch admitted that he had external pressures to negotiate other CBAs between Nexstar and labor organizations (Tr. 584). Pautsch testified that the Union did not complain that there were not enough bargaining sessions being held, but he admitted that Biggs-Adams did say that bargaining should be held once a month (Tr. 585).

During bargaining, the Union would send out bulletins, written by Biggs-Adams and Hansen, to its members to inform them of how the negotiations were proceeding (JX 17; Tr. 75, 352–353). Biggs-Adams and Hansen took notes during the bargaining sessions (JX 13–14; Tr. 76–79). Respondent also created bargaining notes, but the record is unclear as to who wrote these notes (JX 15). Wenger also created a document at the start of negotiations with each proposal and the dates of the proposals, counter proposals, and tentative agreements. This document was continually updated during negotiations (R Exh. 2; Tr. 590–592).

The parties’ ground rules, which were not reduced to writing, included exchanging written proposals and emailing one another the party’s proposal by the end of the day (although this email often would not be delivered that same day). On June 21, 2017, Respondent and the Union presented proposals for a successor CBA (JX 3 and 4; Tr. 60–61). Respondent’s proposal enumerated each section of the expired CBA with a designation of “C-X” or “CE-X” with C being “Company,” E being “Economic,” and X being a number (Tr. 183, 369–370, 587). Respondent’s proposal included revisions to Article 2, union security; removal of Article 3, union business which concerns dues checkoff; revisions to Article 3, union business, bulletin board; and redefining Article 8, hours of work, including the normal work week and overtime (C-5, C-6, C-7, C-16, C-17, C-18, C-19, respectively). Respondent’s proposal also removed the letter of understanding from the expired CBA which covered health care (C-46); Respondent did not offer any written healthcare proposal and wage proposal when submitting the initial proposal
to the Union. The Union’s proposal limited changes to the expired CBA, and addressed only the bulletin boards, hours of work, updates to employees’ healthcare coverage, and employee wages (Tr. 62–63). In August 2017, Biggs-Adams characterized Respondent’s initial proposals as an “attack” on the Union by proposing not requiring employees join the Union and no dues checkoff provision (JX 17 at 2).

When the parties began bargaining in 2017, Respondent’s representatives had not previously negotiated with Biggs-Adams and the other union representatives as they were new owners of KOIN-TV. According to Biggs-Adams, the parties spent much of 2017 and 2018 bargaining about employee reimbursements and travel time for assignments (Tr. 65–66). Biggs-Adams agreed that the parties made relatively good progress, albeit in fits and starts, with negotiations in 2017 and 2018 when they reached tentative agreements (Tr. 67). She testified, however, that in 2019 the bargaining became more difficult (Tr. 68). As of December 2018, there remained several economic issues to be resolved in negotiations which were overtime after 8 hours (C-17) and on the 6th and 7th day of the workweek (C-18), union security (C-5) and business (C-6), length of the term for the CBA (C-43), indemnification (C-47) along with wages and healthcare (JX 17 at 32; R Exh. 2; Tr. 68–72).

Hansen testified that negotiations were contentious, and Pautsch, Busch, and Nevin were not “very nice” and “pretty bossy” (Tr. 447). Hansen also testified that Nevin would often interrupt Biggs-Adams when she spoke, accused Biggs-Adams of incompetence and being fired from her last job, and would ask why the Union could not bring in someone to bargain who was competent (Tr. 449). Videographer Matthew Rashleigh (Rashleigh) testified that he attended a couple bargaining sessions in the spring and summer of 2019 (Tr. 532). Rashleigh testified that bargaining sessions appeared tense and not productive (Tr. 352). He also reported that Nevin appeared hostile towards Biggs-Adams, and Nevin would often interrupt her and tell her that her suggestions were unacceptable (Tr. 352).

Pautsch testified that in 2017 when he became involved with negotiating the successor CBA, he observed a difference in negotiating styles between Busch and Biggs-Adams (Tr. 578). Pautsch stated that Busch had a structured negotiating style while Biggs-Adams had a less structured style where the Union presented a set of proposals (Tr. 578–579). Pautsch also claimed that Biggs-Adams would reject proposals and would not provide a counterproposal (Tr. 579–580). Pautsch testified that Biggs-Adams would become flushed in her face, and targeted Nevin, calling him offensive names such as “dick” (Tr. 580). Pautsch adamantly denied ever swearing or losing his temper at the bargaining table (Tr. 580–581). Pautsch also testified that while he participated in negotiations, he did not hear any other profane outbursts from Biggs-Adams (Tr. 582).

Nevin testified that negotiations were “hostile, contemptuous” and difficult to move the process forward (Tr. 781–782). Nevin claimed that negotiations improved slightly with the mediator but early in the process there was vulgarity by Biggs-Adams. Nevin testified that Biggs-Adams referred to Nevin as a “dick and as a dickhead,” told him he was “full of shit” and this proposal was “bullshit,” would use “f-bombs,” and made derogatory comments toward Busch (Tr. 782). Nevin then stated that “never” would anyone from Respondent’s team engage in similar conduct (Tr. 782). Nevin testified that these “outbursts” from Biggs-Adams would occur in response to a proposal or counter proposal, and when Respondent accused her of failing
to engage in progressive negotiations (Tr. 783). Nevin also testified about “picketing events, mobilization events happening at advertisers, multiple locations at the station” which Hansen, videographer Robert Dingwall (Dingwall) and editor James Boehme (Boehme) would attend (Tr. 782, 787). With regard to events after the withdrawal of recognition, Nevin testified that a “bizarre” process occurred where he was told to come to the facility to meet a priest (Father Mosbrucker) (Tr. 782).

**Credibility**

The witnesses for each party provided differing testimonies on the course of bargaining. I relied primarily on the testimonies of Biggs-Adams and Hansen in these findings of fact. Biggs-Adams testified in a highly credible, authentic manner where her testimony could be relied upon to set forth many facts in this case. Her attention to detail as well as sharp recall of events and admissions of non-recollection of events enhanced her credibility. Biggs-Adams paused to reflect on her answers and would offer when she could not recall specific events and then relied on her notes for those instances. She also honestly spoke of her off-color language during bargaining. Her testimony was also consistent with Hansen’s testimony as well as both of their bargaining notes. Hansen also testified credibly as her testimony was consistent with Biggs-Adams and her bargaining notes corroborated her testimony. Biggs-Adams and Hansen’s bargaining notes were consistent with one another, and generally used to refresh their recollection of events during their testimonies. Hansen’s notes provided more specific details. I found both witnesses highly credible as they testified primarily from their memories before consulting their bargaining notes.

In contrast, the testimonies of Respondent’s witnesses could not be relied upon for varying reasons. Pautsch’s testimony was unfocused, confusing, and filled with tangents. Generally, he would not directly answer questions from any of the attorneys without speaking about irrelevant matters. His lack of focus did not offer much to this hearing and generally did not contradict the testimony of the Union’s witnesses as to how negotiations proceeded. For example, Pautsch continued to deny that Respondent wanted to negotiate the amount of the initiation fees and monthly dues, but the subject continually arose, hampering discussions of other proposals such as wages. During cross-examination, Pautsch testified in a hesitant manner where he appeared to be hiding the truth of Respondent’s motivation during bargaining. Pautsch’s testimony cannot be credited. Nevin testified in an irritable manner with very few specific details including the timing of conversations. He appeared guarded during cross examination. Furthermore, his credibility was completely eroded when he claimed that he never spoke with profanity during negotiations which cannot be believed as the course of these negotiations were clearly tense as set forth in the memorandums he signed and issued to the bargaining unit employees. Thus, I do not credit Nevin’s testimony.

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14 At the hearing, Biggs-Adams testified that Nevin’s use of the term “progressive negotiations” was unfamiliar to her despite having bargained CBAs for 40 years. She testified that she eventually learned that the term referred to maritime law (Tr. 151–152).
15 Biggs-Adams testified that mobilization is a tactic that the Union uses to exert economic pressure on employers to reach agreement on a CBA (Tr. 351). Biggs-Adams admitted that she used similar tactics when negotiating the expired CBA (Tr. 361–362).
As Biggs-Adams testified, bargaining for a CBA can be difficult, and during these negotiations, she did use vulgarity when she felt that the employees were not being respected. However, Respondent’s witnesses attempted to shift all the blame of lack of progress during negotiations on Biggs-Adams’ behavior while attempting to paint themselves as virtuous, polite individuals whose conduct could not be questioned. The credited testimonial evidence as well as unrefuted documentary evidence shows otherwise. Moreover, Respondent’s claims of innocence simply do not ring true. Biggs-Adams and Hansen testified that Biggs-Adams used vulgarity during negotiations but not to the extent that Nevin claimed; even Pautsch testified that Biggs-Adams used profanity once towards Nevin but not on any other occasions while he participated in negotiations. Clearly, Respondent’s memorandums to the bargaining unit employees conveyed an annoyance and hostility with the Union, particularly Biggs-Adams. Biggs-Adams and Hansen’s notes also indicated that on June 26 Nevin was “pissed” about the questioning, and on June 27, Pautsch insulted Biggs-Adams, calling her “obscene names” and saying she is “obnoxious and foul mouthed” (JX 13 at 9; 14 at 11). Pautsch incredibly testified that Biggs-Adams would reject proposals and not provide any counterproposals. This testimony is contradicted by the documentary evidence that shows the Union provided many counterproposals to Respondent. Thus, I credit the testimony of the General Counsel’s witnesses as to the course of negotiations, and generally do not credit Respondent’s witness’ testimony.

1. January 24 and 25: Bargaining Sessions

The first bargaining sessions in 2019 were held on January 24 and 25. On January 24, Respondent provided an all-or-nothing package proposal to the Union; these were the first economic proposals presented by Respondent (JX 11; Tr. 83, 91–92). Pautsch testified that despite the package proposal stating that “any part that alters this proposed package then the entire package is null and void,” he told the mediator that Respondent would be willing to resolve portions of the package as a “separate mini package” (Tr. 595; JX 11). These proposals included paid leave, benefits, overtime after 8 hours, overtime on the 6th and 7th day of a workweek, union security, union business, and indemnification.

To summarize Respondent’s package proposal:

- **Leave**: Respondent proposed that paid leave would be governed by Respondent’s handbook, which could be modified at any time (Tr. 92–93).
- **Union Security**: As for the union security article, Respondent proposed removing language which made membership in good standing conditional on employment (JX 11).

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16 Bargaining notes can be considered as substantive evidence useful to determine what occurred during negotiation sessions. Pacific Coast Metal Trades Council (Lockheed Shipbuilding), 282 NLRB 239, 239 fn. 2 (1986); Allis-Chalmers Mfg. Co., 179 NLRB 1, 2 fn. 9 (1969).

17 The indemnification proposal was a new provision to this CBA offered by Respondent. This proposal requires the Union to hold Respondent harmless for any breach of data claims in connection with alleged improper disclosure caused by dues withholding, to hold Respondent harmless for any claims of persons injured or harmed by employees whose motor vehicle records were not obtained by the Union, and to permit Respondent to choose legal counsel while the Union bore the costs (JX 11; Tr. 84, 411–412).
Union Business: As for the union business article, Respondent continued to propose that the Union use an identifier other than employees’ Social Security numbers, which is the method national NABET uses for collecting dues (Tr. 85–86, 613–614). Furthermore, Respondent proposed that employees would not be limited to opting out of paying dues only during the current set yearly period but could opt-out at any time (Tr. 87). Respondent’s proposal altered language in the Union’s “dues and initiation fee check-off authorization form” which was included in the expired CBA and located after the union business article (JX 6(g)).

Overtime: Respondent proposed that employees no longer receive daily overtime, that employees receive permission to work overtime, and that vacation, holiday compensation and sick hours would not be included in the computation of overtime (JX 11).

Benefits: Respondent proposed that employees would be covered by its benefit plans including health, dental, vision, short and long-term disability, life insurance, and retirement. Moreover, any changes to the plan would apply equally to bargaining unit and non-bargaining unit employees (JX 8(a); Tr. 382–383, 598–599). Pautsch referred to their healthcare proposal as a “trust me” proposal (Tr. 383). Respondent verbally informed the Union that the premiums to be charged to employees would be a maximum of 10.4% of their gross earnings (Tr. 104–106, 387, 601).

Pautsch testified that Respondent’s proposed successor CBA language was similar to 80 percent of Nexstar’s other CBAs (Tr. 599). Pautsch also testified that those labor organizations agreed to Respondent’s benefits proposals (Tr. 601). Bargaining then ended for the day.

Thereafter, Biggs-Adams sent Pautsch two requests for information concerning continuation of health coverage rates in the event of voluntary or involuntary job loss (COBRA rates), Respondent’s contribution amount to employees’ healthcare costs, and questions regarding the medical, dental and vision coverage proposed by Respondent as well as a list of the current bargaining unit employees including new hire employees at Respondent as well as any wage increases and job titles for employees (JX 18, 19). Biggs-Adams testified that she sought this information to determine healthcare costs for employees as well as a potential wage proposal (Tr. 103). In response, Respondent sent her the COBRA rates, 2019 medical, dental and vision premiums for union members as well as the 2017 dental and vision employee contributions (Tr. 246–247; JX 60(a), (b), (c); 62(a) and (b)). Ultimately, Biggs-Adams testified that the Union did not receive a response from Respondent regarding the amount of the employer, not employee, contribution toward healthcare until almost one year later, on December 9 (Tr. 101–102, 104–105, 241–244, 698).

The following day, January 25, Briggs-Adams, Hansen, and the mediator arrived for bargaining at 9:00 a.m. Pautsch arrived for bargaining around 10:15 a.m. (JX 14 at 2). The parties began the session by discussing the indemnification proposal which had arisen from an issue involving employees giving Respondent permission to conduct background checks on their driving history (Tr. 90, 408–409). Biggs-Adams and Pautsch also discussed Respondent’s

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18 Biggs-Adams testified that the COBRA rates could help her determine how much Respondent allocated for healthcare (Tr. 397–398).

19 Biggs-Adams testified that Respondent first proposed the indemnification article on January 24, but Respondent
healthcare proposal. Biggs-Adams raised concerns that Respondent’s healthcare proposal would cause employees’ contribution towards healthcare to change weekly depending on the wages earned by the employee (Tr. 93–95). Pautsch argued that their proposal helped employees who earned less money, but Biggs-Adams argued that employees could not budget appropriately if they did not know how much they would be contributing weekly. In addition, Biggs-Adams raised concerns about abortion coverage and the lack of gender dysphoria treatment coverage in Respondent’s healthcare proposal (Tr. 99, 388–389). Pautsch told her that he was looking into these issues (Tr. 99–100, 389–390, 687).20 Biggs-Adams also asked to see the actual proposed healthcare costs.

During this session, Pautsch left negotiations at around 10:40 a.m., and returned at 1:35 p.m. but left less than 10 minutes later after a short discussion on the Union’s information requests (JX 14 at 2–3; Tr. 107). The parties then discussed next dates for bargaining. Respondent would not agree to bargain in February due to “sweeps” month when ratings have a higher advertising value for subsequent months but Respondent had agreed to bargain on March 13 and 14 (Tr. 108, 110, 324–325).21 However, after negotiation sessions ended, the parties learned that the mediator’s schedule prevented the parties from bargaining on March 13 and 14 (Tr. 108–111, 113–114, 326; JX 17 at 34, JX 20). The mediator and Union were available on March 28 and 29, but the dates would not work for Pautsch (JX 20: Tr. 415–416). Eventually, the parties agreed to bargain next on April 23 and 24 (Tr. 328–329).


After bargaining completed on January 25, that same day, the Union sent a bulletin to its members regarding bargaining. The Union explained the package proposal submitted by Respondent. The Union noted that Respondent proposed major changes to economic terms but did not propose a wage article (JX 17 at 33; Tr. 400–401). The Union explained that Respondent’s leave, benefits, and indemnification proposals were newly raised while Respondent’s union security and business and overtime after 8 hours as well as on 6th and 7th workday were the same proposals as previously submitted to the Union. The Union characterized Respondent’s proposal to charge the Union a fee for dues withholding as “anti-union.” Finally, the Union wrote that they were ready to take mobilization public (JX 17 at 33–34; Tr. 111, 358).22

3. March 5: Respondent’s Negotiation Re-Cap and Update Memorandum to Union Members

On March 5, Nevin sent a memo to all union members regarding the January negotiations (JX 21).23 Nevin pointed out that the parties were reaching 2 years after the expiration of the

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20 Pautsch testified that no other labor organization sought to change any part of Nexstar’s health plan coverage (Tr. 603, 687).
21 Sweeps occurs during the months of February, May, July, and November (Tr. 109).
22 Biggs-Adams testified that the Union discussed mobilization but did not actually go to any advertisers to ask them to not advertise on KOIN-TV at that time (Tr. 358).
23 Pautsch testified that every bargaining update that went to employees under Nevin’s name was written by
CBA. In this memo, Nevin informed the members that Respondent wanted to share items that
continued to remain unresolved and highlight other issues. First, Nevin discussed the Union’s
initiation fees and monthly dues. Nevin characterized the initiation fees as much as “10x higher”
than other Nexstar markets, and Respondent found the Union’s initiation fees and monthly dues
to be “unfortunate and reprehensible.” Nevin wrote that Respondent was trying everything they
could do to reduce the members out of pocket expenses.24

Nevin also informed the employees that the parties disagreed about the language in the
union security proposal which would require Respondent to terminate any employee who had not
fulfilled their financial obligation to the Union. Nevin then blamed Biggs-Adams for refusing to
negotiate the union security article which he alleged explained why negotiations were going on
almost 2 years.25

Nevin also claimed that Respondent’s healthcare costs were low, and that Biggs-Adams
instead focused on coverage of specific healthcare issues rather than the remaining unagreed
articles for negotiations which was “counterproductive and a waste of time.”26 Nevin closed his
memo to employees by “set[ting] the record straight” on the status of negotiations. Nevin
informed the employees that Respondent provided comprehensive proposals to which the Union
had not countered, and that wages had not been discussed. Nevin stated that Respondent was
“pessimistic” in reaching a ratified CBA (JX 21).

4. April 23 and 24: Bargaining Sessions

On April 23, the parties met a little after 10 a.m. to resume negotiations. Outstanding
items to be bargained included leave,27 benefits, overtime, short turnaround,28 the union security
and business articles as well as an indemnity clause (GC Exh. 20; Tr. 383). Respondent asked
the Union to provide a counterproposal to its package proposal submitted in January. Biggs-
Adams suggested that the parties break up the package as negotiations of package proposals had
not been working. But Respondent kept insisting that the Union present a counterproposal
despite Respondent’s presentation of the package as an all or nothing proposal.

Thereafter, the Union and Respondent began discussing the issue of the Union’s initiation
fees. Biggs-Adams raised the issue since she understood that Respondent had been informing
employees that the parties had been negotiating the Union’s initiation fee (Tr. 376–377). Pautsch
confirmed that Respondent had been informing employees that they were going to help

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24 Pautsch denied seeking to reduce bargaining unit employees’ initiation fees despite these statements in its memo
(Tr. 684). However, Pautsch admitted that Respondent felt that the initiation fees were too high, did not want to
collect the amount, and proposed not collecting the initiation fees (Tr. 693). Pautsch claimed that Respondent only
sought to call into question the Union’s judgment due to the amount of the initiation fees (Tr. 684).
25 Biggs-Adams testified that she would not negotiate the amount of the initiation fees with Respondent but was
willing to bargain over the processing of union dues (Tr. 376). Biggs-Adams sought information from Respondent
on the costs they claimed to incur when processing union dues (Tr. 127).
26 Pautsch defended this statement by claiming it was Respondent’s Section 8(c) right to express their opinion on the
healthcare coverage sought by the Union (Tr. 686).
27 At mid-day, on April 23, the Union submitted an information request to Respondent concerning its leave proposal
(JX 22; Tr. 130–131). Respondent eventually provided a response to the Union.
28 Biggs-Adams described short turnaround as the payment which employees would receive for working less than 12
hours between shifts (Tr. 68–70).
employees with the initiation fee and would not collect that fee because it was too high and interfered with their ability to hire employees. Nevin claimed that prospective employees turned down their job offers due to the initiation fee. Respondent also compared the cost of the Union’s initiation fee at KOIN-TV to the initiation fee at other locations. Biggs-Adams justified the amount by explaining that other Nexstar locations are smaller advertising markets than KOIN-TV (Tr. 372). Pautsch and Nevin insisted that Respondent had an issue with the Union’s initiation fee and would not be part of a process that requires employees to pay that fee (Tr. 371–372, 376–377, 799). Pautsch claimed that the Union’s initiation fee was their business since they had to be involved in collecting the money. Biggs-Adams then asked why this issue arose at such a late stage of bargaining as the collection of the initiation fee by Respondent through payroll deduction had not been an issue previously (Tr. 114, 128–130). Pautsch testified that as he sat through “long caucuses” during negotiations, he learned of employees resigning and there was “some concern over this big initiation fee” where employees would ask if they had to join the Union (Tr. 619). Thus, Pautsch testified that he began pursuing this issue (Tr. 619). Biggs-Adams testified at the hearing that even though Respondent proposed that they would not deduct the initiation fee, Respondent was “actively campaigning” about the amount of the initiation fee and informing employees that they were working to reduce that fee (Tr. 376–377).

At the end of the April 23 session, Respondent presented the Union with a counterproposal to the union security and business articles (JX 5(h), 6(h)). Biggs-Adams testified that Respondent’s union security proposal did not reflect the realities of how the dues structure worked at the local union level (Tr. 132–134). As for the union business article, Biggs-Adams testified that Respondent’s proposal continued to remove employees’ Social Security numbers for dues processing which would require the national NABET to create a new system. Biggs-Adams explained that Respondent proposed several changes to the “dues and initiation fee checkoff authorization form” including no longer authorizing deduction of the initiation fee as well as removing the irrevocable period for cancelling dues withholding (Tr. 372, 627). Furthermore, Biggs-Adams disagreed the charge Respondent proposed to process the dues checkoff (Tr. 132–137).

Pautsch testified that he based Respondent’s proposed changes to the Union’s “dues and initiation fee checkoff authorization form” on NLRB General Counsel’s (GC) memorandum 19-04 which suggested that the prior language in the expired CBA was “faulty” (Tr. 616). Pautsch testified that GC memorandum 19-04 stated that any chargeable deduction must be included in the authorization form, not until an employee asks what those deductions would be, and that the right to resign from a union can occur at any time (Tr. 617). Pautsch stated that he could not include a provision in the CBA which was unlawful in Respondent’s point of view (Tr. 617–618). Furthermore, Pautsch testified that Respondent removed initiation fees withholding from

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29 GC Memorandum 19-04 was issued on February 22, 2019 and concerned unions’ duty to properly notify employees of their General Motors/Beck rights and to accept dues checkoff revocations after contract expiration. NLRB v. General Motors Corp. (General Motors), 373 U.S. 734 (1963); Communications Workers of America v. Beck (Beck), 487 U.S. 735 (1988). On February 1, 2021, the Acting General Counsel in GC Memorandum 21-02 rescinded GC Memorandum 19-04. Regardless, General Counsel memorandum are opinions, and not binding precedent on the Board.

30 Pautsch testified, prior to Respondent’s ownership of KOIN-TV, he learned, through the NLRB website, that there was a history of Beck litigators against the Union at the facility, and he needed to “clean this up” (Tr. 618, 709–711). It is unclear to what Pautsch was specifically referring to on the NLRB website. In Beck, the Supreme Court held that a union has an obligation to inform employees of their right to be or remain nonmembers. A union must
the “dues and initiation fee checkoff authorization form” because Respondent did not agree with the amount charged (Tr. 627).

The Union also countered Respondent’s proposal concerning benefits despite not receiving the information requested in January (the amount of Respondent’s contribution towards employees’ healthcare costs) (JX 8(b)). The Union proposed that bargaining unit employees would be covered by Respondent’s healthcare plan, but that employees’ healthcare costs would not increase above the amounts set forth in the expired CBA (Tr. 599–601). The Union also added in a provision regarding any windfall from a reduction in corporate taxes in 2017 (Tr. 384, 600); in early spring 2018, Respondent announced that all employees not covered by a CBA or in negotiations would receive a bonus as an increase in the amount of 401(k) contributions from Respondent (Tr. 384–385). The Union also proposed that Respondent provide medical coverage for gender dysphoria treatment as well as all women’s health services, including abortion. Finally, the Union proposed that Respondent would not cut back employees’ healthcare coverage, regardless of changes for non-bargaining unit employees (JX 8(b); Tr. 131–132, 383–386, 600).

The following day, April 24, the Union presented its wage proposal based upon information provided by Respondent earlier in the day (Tr. 401; JX 14 at 6). The Union proposed entry level minimum rates along with a 3.5 percent wage increase yearly per a 4-year term CBA. The Union noted that wages for the bargaining unit had not increased since July 2016. Biggs-Adams testified that the wage increases the Union proposed were appropriate for the skills the jobs required, the Portland cost-of-living, and the minimum wage of $15 per hour (JX 9, 13, 23, 24; Tr. 139–147, 403). Also, on April 24, the parties discussed dates for the next session of bargaining. Respondent would not agree to meet in May due to sweeps month, and thus, June 25 and 26 were agreed upon dates for the next session (JX 13; Tr. 147–148, 330).31

5. April 24: Union Bulletin 27

On April 24, the Union sent a bulletin update to its members (JX at 36). The Union recapped Respondent’s package proposal of January 24 and explained that Respondent would not compromise on those terms. Thus, the Union requested information on wages and submitted a wage proposal.

6. May 31: Respondent’s Negotiation Update Memorandum to Union Members

On May 31, Nevin sent a negotiations update memo to all members of the Union (JX 25). In this memo, Nevin blamed the business representative, as he referred to Biggs-Adams, on the “stalled” negotiations; Nevin claimed that Biggs-Adams stalled negotiations for 2 years during the expired CBA.32 Nevin then told the members that they tried to discuss the “exorbitantly high

31 Although Biggs-Adams’s bargaining notes as well as April 24 bulletin to union members indicates that bargaining was set for June 25 and 26, bargaining took place on June 26 and 27 (Tr. 330–331).
32 Biggs-Adams testified that negotiations over the now expired CBA occurred with a former owner of KOIN-TV and did not involve Pautsch or Nevin. Furthermore, she testified that the parties reached agreement in that expired CBA (Tr. 150).
initiation fees and monthly dues” that they are “saddled with.” Nevin also stated that the Union’s wage proposal was more than double minimum pay levels and double digit wage increases which is not “good faith bargaining and presents a wide gap between this first proposal and reality.” Nevin went on to state that Biggs-Adams took an “unprofessional approach” by asking advertisers to cease ads on KOIN-TV. Finally, Nevin claimed that the NLRB in Seattle found merit in two unfair labor practices filed against Biggs-Adams for bad faith bargaining. Nevin hoped that next month Biggs-Adams would “engage in progressive negotiations, good faith bargaining and stay focused on what matters to [members] most [...].” (JX 15).

7. June 20: Respondent’s Union Activities Memorandum to All Employees

On June 20, Nevin sent another memo to all employees regarding recent activities by the Union in Portland (JX 26). Nevin once again alleged that “the assigned union representative” had been repeatedly unprepared and unwilling to engage in progressive negotiations, used stall tactics to avoid discussing wages as well as the “exorbitant initiation fees and monthly dues the union requires.” Nevin continued to claim that Respondent had come to every negotiation session prepared to negotiate in good faith and submitted “over a hundred proposals and counter proposals” to reach an agreement. Nevin alleged that the Union refused to submit additional information requested, and as a result engaged in bad faith bargaining which resulted in complaints issued by the NLRB. Nevin then stated that the Union asked local advertisers to stop advertising at Respondent along with demonstrations and flyers asking people not to shop at a store that advertised on KOIN-TV. Nevin stated that Respondent found the Union and “the representation from San Francisco” to be engaged in “highly unprofessional and reckless conduct.”


In a June 26 Union “bargaining and mobilizing bulletin,” the Union informed the members that it planned to discuss wages again during the next bargaining sessions. In this bulletin, the Union noted that the executives’ wages at Respondent were high (JX 17 at 37; Tr. 358–359). Biggs-Adams testified that her purpose in calling attention to the executives’ salaries was to counter Respondent’s argument that there was no money for wage increases, and the employees had a right to share in these increased earnings (Tr. 359). Biggs-Adams testified that she did not expect a “response” from Respondent since they should know what these salaries are (Tr. 359). In this bulletin, the Union also informed the members that Respondent sought to remove overtime after 8 workhours in a day. As for benefits, again, the Union informed members that Respondent sought to adjust healthcare premiums per pay period depending on how much a member earned during that time. Furthermore, the Union highlighted the numerous

33 Biggs-Adams testified that Respondent continued to suggest to bargaining unit employees that they were negotiating the rate of the initiation fee even though their written proposals only concerned Respondent not deducting the initiation fee from employees’ paycheck (Tr. 372). At the hearing, Pautsch testified that Respondent was addressing the issue with “productive discussions,” not negotiating the amount (Tr. 689). Pautsch claimed that the amount of the initiation fee was raised to call into question the Union’s business practices, similarly to how the Union questioned Respondent’s executive compensation (Tr. 689–690).
34 Respondent had not submitted a wage proposal to the Union thus far during negotiations (Tr. 150). Biggs-Adams also disputed Nevin’s characterization that the Union would not discuss hourly wages since she raised the issue several times during negotiations and presented a wage proposal in April (Tr. 152).
35 Nevin’s statement is hyperbole as Respondent had not submitted hundreds of proposals to the Union.
unfair labor practice complaints issued by the NLRB against Respondent, along with a complaint against the Union regarding an article in The People’s World Daily. Finally, the Union asked its members to mobilize and place economic pressure on advertisers to force Respondent to compromise during negotiations (Tr. 359–360).36


The next dates for bargaining were June 26 and 27. On June 26, prior to bargaining beginning for the day, Respondent submitted an information request to the Union requesting information on initiation fees and monthly dues, Beck notices, and documents to establish the monthly dues charged to employees. Respondent wanted the information the following day. Respondent ended its request offering to verbally discuss the responses as well as Respondent’s April 23 counterproposals on the union security and business articles (Tr. 154–155, 632; JX 27). Biggs-Adams responded that same day, refusing to provide the information for various reasons and accusing Respondent of “harassing and delaying avoiding bargaining” (Tr. 156, 363–364, 633; JX 28). The following day, Nevin responded to Biggs-Adams refusal to provide the information. Nevin wrote that the Union’s objections were “bad faith,” and that the dues authorization form proposed by the Union violated portions of GC memorandum 19-04 “as well as rights of our employees in relation to dues checkoff.” Nevin continued to disagree with the Union’s position that the dues checkoff provision is not their concern. Nevin wrote, “[W]hile the amount you charge for dues and initiation fees is between you and each member or potential member, it becomes important to our business when you ask us to agree to checkoff dues from each purported member” as they must follow “Section 302 of the LMRDA, the Beck decision, and relevant law as alluded to in GC 19-4” (JX 29).

The parties started the June 26 session at almost 3 p.m. (JX 13 and 14). Biggs-Adams testified that she felt that Respondent by inquiring into their initiation fees “was mucking about in something that was none of their business […]” (Tr. 157, 170). She further testified that Respondent originally proposed to bargain over the administration of the union security and business articles such as a fee for the processing of the dues as well as the use of employees’ Social Security numbers as identifiers. However, Biggs-Adams testified Respondent’s message to employees was that they would reduce their initiation fees and monthly dues (Tr. 156–157).

As for wages, Pautsch told the Union that their April 24 proposal was “out there” for demanding too much money (Tr. 158–159, 405–406). Pautsch told Biggs-Adams that Respondent bargains hard and only parts of a percentage (Tr. 406–407). Pautsch testified that the Union’s wage proposal was a “very high opening proposal,” and that he would “take great risk in countering [the wage proposal] at all” (Tr. 644). Nevin added that the advertising market had declined considerably so as not to justify the Union’s wage proposal (Tr. 406). Biggs-Adams responded that the facility was a successful television station, and wages should be increased accordingly (Tr. 158, 406–407).

36 The Union’s bulletin to its members of Local 51 in San Francisco asked that they sign a petition addressed to Nevin asking that he bargain and “stop Union busting” (JX 17 at 41).
37 A complaint was issued by the General Counsel on the Union’s refusal to provide this information to Respondent. However, this complaint was settled between the Union and General Counsel, and Respondent’s appeal was denied (Tr. 366).
The following day, June 27, the parties met for negotiations. These negotiations were heated between the parties. Nevin continued to address Biggs-Adams as the assigned representative, rather than Union president, and Pautsch blamed the negotiations on Biggs-Adams and her “ego” (JX 15 at 9). Biggs-Adams, in contrast, testified that Respondent remained upset from the day before about the Union’s wage proposal (Tr. 160). Biggs-Adams testified that Nevin continued to say that the Union’s wage proposal was excessive and inappropriate (Tr. 161). She asked Nevin to “respectfully be quiet” so she could explain the problems that the Union had with Respondent’s other proposals (JX 15 at 8). Nevin also expressed displeasure at the Union’s mobilization campaign (Tr. 160–161, 640–641).

The union business and security proposals were discussed (Tr. 381; JX 14 at 11). Nevin continued to attack the Union’s monthly dues and initiation fee amounts. Pautsch stated during bargaining that the Union could raise its initiation fee to $10,000 and Respondent would not collect it (Tr. 372; JX 15 at 9). Pautsch testified that the Union’s initiation fee caught his attention as being higher than any he had seen in his career, and then based on his observation, he assumed that the turnover Respondent had been noticing with employees must be due to the Union’s initiation fee which would average $2,800 to $3,000 per employee (Tr. 621–622, 624–625, 642–643, 701–705). Biggs-Adams told Respondent that the initiation fee was a “ridiculous issue” as this fee had been set for many years and accused Respondent of raising the issue late in bargaining to delay the process (Tr. 425; JX 13 at 12). Biggs-Adams testified that Nevin’s attacks were disrespectful since Union’s membership had voted on the amounts of these initiation fees (Tr. 162–163). Biggs-Adams also testified that Respondent’s behavior towards the Union and its initiation fees and monthly dues was offensive to her (Tr. 163; JX 15 at 8).

Thereafter, the Union presented a counterproposal to Respondent’s union business proposal. The Union proposed the language of the expired CBA and argued that Respondent’s proposal was a non-mandatory subject of bargaining, the Union would not bargain over changes to its dues and initiation fee structures, and would not agree to a monthly charge to the Union for processing dues without an explanation from Respondent (JX 6(j), 15 at 9; Tr. 163–164). Biggs-Adams testified that Respondent’s tone during bargaining continued to be “dismissive, not-going-to-do-it, disrespectful bargaining” (Tr. 165). Biggs-Adams continued that Respondent’s negotiations took a nasty tone, with a lack of respect for the Union as demonstrated in Respondent’s memorandums to employees where they were trying to create controversy and union-busting (Tr. 165). The Union also presented their counterproposal to Respondent’s Union security proposal (JX 5(i)). Biggs-Adams informed Respondent that the Union would not negotiate the status of members, the Union’s proposal covers Beck, and Respondent’s proposed language for the “dues and initiation fee check-off authorization form” was inappropriate (Tr. 168–169).

Biggs-Adams testified that she does not shy away from swearing during bargaining particularly when she perceives “union busting” and disrespect for workers (Tr. 165–166, 484). She admitted that on June 27 she was “a little crass” but that Respondent also used swear words (Tr. 166). Biggs-Adams testified that Nevin on June 27 called her a bitch (Tr. 167–168).  

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38 Respondent presented no evidence that the Union’s initiation fee impacted Respondent’s ability to hire and retain employees.
39 Pautsch denied calling Biggs-Adams a bitch and testified that he did not hear Nevin calling Biggs-Adams a bitch (Tr. 581–582). As set forth within, I do not credit Pautsch’s absolute claims that neither Nevin nor he used any
Hansen’s contemporaneous notes indicated that on June 27 Pautsch insulted Biggs-Adams, calling her obscene names and said she was foul mouthed and obnoxious (JX 14 at 11; Tr. 483). Respondent’s bargaining notes indicate that Pautsch told Biggs-Hansen she was “vulgar”, and she told Nevin to “hush” (JX 15 at 9). Hansen testified that Pautsch insulted Biggs-Adams much worse before the mediator was added to bargaining (Tr. 450). Hansen also testified that she often would not add in Respondent’s insults directed at Biggs-Adams in her notes because it was “embarrassing” and “shocking” (Tr. 451).

The parties then agreed to bargain on August 15 and 16 (Tr. 169–170). Biggs-Adams testified that Respondent would not agree to bargain during any month that was a sweeps month although Respondent did not directly excuse its unavailability as such (Tr. 169–170; 172).


Upon the conclusion of bargaining on June 27, the Union issued another bargaining bulletin. The Union wrote about the wage proposal, which “enraged” Pautsch as to the amount requested; Respondent continued to not submit a wage proposal to the Union (JX 17 at 39; Tr. 171). The Union wrote that Nevin stated that there was no money to increase wages for employees. Regarding the healthcare plan, the Union characterized Respondent’s plan as a “Trust Me” model. Respondent also offered less vacation days by proposing that bargaining unit employees’ leave be covered by its employee handbook. The Union characterized the negotiations as “devolving” when Nevin told the Union that there was no difference between the Portland DMA and the Buffalo, New York DMA, despite the Buffalo DMA being 30 points lower than Portland. Respondent’s Union Update and Questions to Ask Local 51 President

On July 22, Nevin sent a memorandum to all union members. In this memorandum, Nevin expressed Respondent’s frustration with Biggs-Adams for not bringing a CBA for ratification because she was purposefully stalling or coming unprepared to engage in substantive negotiations. Nevin wrote that the parties could not come to an agreement despite Respondent’s good-faith efforts for 36 days of bargaining over 2 years, partially in the presence of a mediator. Nevin wrote, “Your representation [Biggs-Adams] is without direction, focus and is quite frankly narcissistic. The lack of focus displayed should be studied in teachings on how not to negotiate. We sincerely believe she has wasted your time and ours. It is now obvious that [sic] she enjoys the ‘fight’ more than representing your best interest and bringing about a new contract.” Nevin accused Biggs-Adams of conducting herself similarly during negotiations for the expired CBA (JX 30).

profanity towards Biggs-Adams during negotiations. The record is clear that as time passed, negotiations became tense and frustrating for both parties, and it seems more likely than not that profanity would be used as Biggs-Adams readily admitted. Furthermore, Hansen also testified which her bargaining notes corroborate that Pautsch called Biggs-Adams an obscene name on June 27.

DMA refers to the advertising market size based on an area’s population (Tr. 66-67). The lower the DMA, the higher the advertising rates are for that market.
Nevin wrote, “Of all the issues we have on the table … one stands out clearly to us,” and goes on to highlight in bold that Respondent’s focus during negotiations are the initiation fees which are “very difficult for us to justify and accept.” Nevin stated that these fees were “outrageous” and used by Biggs-Adams to travel to Portland to waste time during bargaining and “wine and dine on your dime.” Nevin then told the employees that Respondent would continue to resist the demands by the Union to collect these fees, and would not agree to Biggs-Adams’s “push for seeking the right to fire you, if you don’t pay her required fees.” Nevin wrote, “Important decisions lie ahead for all of us.” Nevin closed this memo with proposed eleven questions that members should direct to Biggs-Adams about these initiation fees which are “six times higher than any other union at any other Nexstar-owned station in the country” (JX 30).

Thereafter, on August 2, Respondent informed the Union that effective that pay period, KOIN-TV would stop deducting union dues and initiation fees from employees’ paychecks. Nevin cited a recent Board decision along with General Counsel memorandum 19-04 (JX 31). That same day, Nevin informed all union members the same (JX 32).

12. August 15 and 16: Bargaining Sessions

At the start of the August 15 bargaining session, the Union presented counterproposals to all outstanding CBA articles (JX 12; Tr. 368–369). Specifically, the Union presented revised or reiterated proposals on the following: article 2 union security (C-5); article 3 union business (C-6); section 8.4 daily overtime (C-17); section 8.5 6th and 7th day overtime and 15-minute increments (C-18); article 15 holidays (CE-1); article 17 vacations (CE-1); article 27 term of agreement (C-43); and healthcare letter (C-46). In addition, the Union reiterated its proposals of April 23 for article 18 benefits (CE-2) and of April 24 for articles 24 and 25 wages (JX 12). As for changes to its prior proposals, the Union agreed to not use employees’ Social Security numbers for identification but offered employees’ clock numbers for identification (Tr. 180, 376). The Union also agreed to indemnification for claims arising from dues checkoff, but the Union proposed that they chose counsel (Tr. 180). The Union agreed that vacation, holiday compensation and sick hours would not be included in the calculation of overtime (Tr. 181). The Union proposed a 4-year contract term so there would be time between negotiations as well as time for the economic terms to come to fruition (Tr. 184). Finally, the Union sought to engage in discussions with Respondent if healthcare laws changed in Oregon (Tr. 185).

During a lengthy caucus, the mediator brought a counterproposal from Respondent on article 3 union business (JX 6(l)). This proposal set forth that both the Union and Respondent would select the counsel for any claims but that the Union would be responsible for the costs (Tr. 186–187). Biggs-Adams testified that her concern with the proposal was that it was unclear what would trigger the indemnification portion of article 3 union business (Tr. 187).

Respondent also presented Biggs-Adams with a request for information regarding union membership benefits and included the Union’s welcome letter to new hire employees (R Exh. 3). Respondent sought this information in its review of Union’s counterproposal for article 18 benefit and article 3 union business (JX 33; Tr. 365, 604–605, 715). Specifically, Respondent wanted information about benefits the Union provides its members such as travel club,

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41 Union counsel Yen attended the August 15 and 16 bargaining sessions.
mortgages, savings programs, and personal loans (Tr. 187–188). Respondent wanted this information at the Union’s “earliest convenience but not later than close of business August 15, 2019 so as to allow us to continue to engage in meaningful negotiations on these important topics” (JX 33). Biggs-Adams testified that Respondent sought information on programs not available to Beck objectors (Tr. 188–189, 393–394). That day, Biggs-Adams responded to Respondent’s request for information, refusing to provide the information because those programs are not available to all bargaining unit employees, only those who choose to join the Union (Tr. 365, 605–606, 716–717); in contrast, the Union and Respondent were in the midst of negotiating a CBA applicable to all employees, including Beck objectors (JX 34). Biggs-Adams also accused Respondent of surface bargaining and failure to bargain in good faith due to the information request along with its immediate deadline (JX 34).

Yen and Pautsch also met together during a sidebar with the mediator. Biggs-Adams testified that by asking Yen to engage in sidebar discussion with Pautsch, she sought to disprove Respondent’s claim that she was preventing agreements and that she did not want to bring a CBA to vote to the union members (Tr. 183). However, Biggs-Adams testified that although Respondent’s dismissive tone lessened with the presence of Yen, their cooperation did not improve, and no tentative agreements (TA) were reached (Tr. 186).

Although scheduled by the parties, bargaining did not take place on August 16 (Tr. 192). The parties met during the day separately (Tr. 192–193). The Union submitted an information request to Respondent to determine the impact of Respondent’s vacation proposal when comparing the expired CBA with the current employee handbook (JX 35). The Union requested this information by September 6 (Tr. 193). Also, on August 16, Nevin wrote to Biggs-Adams about her refusal to provide information regarding union membership benefits (JX 36; Tr. 607). Nevin accused Biggs-Adams of bad faith bargaining for refusing to provide requested information to Respondent for the fourth consecutive time. Biggs-Adams again refused to provide the requested information since the programs would be available only to union members, not available to Beck objectors and thus the plans could not be alternatives to Respondent’s health care plans. Biggs-Adams continued to propose that Respondent provide full benefit coverage to all bargaining unit employees, and the premiums set forth in the expired CBA continue to be applicable (JX 37; Tr. 194, 607). The parties could not find dates in September to bargain, and thus, the next dates for bargaining were in October (Tr. 210).

13. August 20: Respondent’s Questions and Answers Memorandum to All Union Members

On August 20, Nevin sent a memorandum to union members where he responded to several questions raised in response to his August 2 announcement regarding dues checkoff (JX 38). Nevin informed union members that they could not be fired if they did not pay their union dues. He wrote that Respondent planned to file additional unfair labor practices charges against the Union and Biggs-Adams due to their “scare tactics, bad faith bargaining, illegal and intentional misrepresentation of the law.” In this memo, Nevin again addressed the initiation fee, refuting Biggs-Adams June 27 union bulletin 29. Nevin provided monthly dues amounts and initiation fees from other organized television stations, and wrote, “Bottom line: There is NO

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42 A complaint was issued by the General Counsel on the Union’s refusal to provide this information to Respondent. However, this complaint was settled between the Union and General Counsel, and Respondent’s appeal was denied (Tr. 366).
justification for her [Biggs-Adams] Local’s exorbitant initiation fees and dues. It is highway robbery and we just couldn’t sit back any longer, watching this travesty occur—while we worked to bargaining in your favor at the table. What I find most interesting is how Ms. Biggs-Adams, tries to call us union busters and greedy, when in fact our fight on this matter is to make your burden to your union more palatable…realistic and in line with the world order, not in line with her lifestyle and $50K expenditures on lawyers.” Nevin continued to discuss a “secret ballot election” to increase union dues 5 years prior. Nevin speculated that in the future the Union and Biggs-Adams could increase the dues to any amount they wanted without any input from Union members. Nevin claimed that Respondent was seeking information from the Union about its “dubious practices in this area.” Nevin closed with claims that Respondent was “working hard to get Ms. Biggs-Adams to the negotiation table to work to ratification.” He alleged that during negotiations, Respondent had learned of “threats of future employment,” “countless acts of bizarre and unprofessional behavior, numerous rants and frequent verbal abuse by union representatives” and “have wasted times with lectures and language which is not focused on employees” (JX 38).

At the hearing, Biggs-Adams testified that she spoke to employees after Respondent decided not to deduct dues from employees’ paychecks to determine ways for them to continue to pay their dues (Tr. 212). Biggs-Adams also testified that in 2010, before she was an officer or member of the Union, the Union held an internal union election to increase monthly dues (Tr. 213). Furthermore, Biggs-Adams testified that Respondent never raised any concerns about the internal union election to increase dues (Tr. 213). Finally, Biggs-Adams testified that she always appeared during scheduled bargaining and offered more dates than Respondent (Tr. 213–214).

On September 27, Biggs-Adams sent a letter to bargaining unit employees who had not yet joined the Union. In this letter, Biggs-Adams explained that the Union was not willing to agree to a CBA which gives up overtime after 8 hours, overtime pay on 6th and 7th days, or agree to an increase in benefit costs to employees without a wage increase. She pointed out that the Union submitted a wage proposal to Respondent in April, but still did not have a response from Respondent. Biggs-Adams then explained the process in which members in good standing voted for the initiation fee and monthly dues rates in a secret ballot election based on their internal union bylaws. Biggs-Adams compared the market size of KION-TV to other Nexstar owned media stations to explain the cost differences in initiation fees and monthly dues. She continued that the Union’s executive board voted to waive initiation fees for the month of October. Bargaining unit employees who joined in October would not pay initiation fees but would pay monthly dues to the Union and receive the ability to attend membership meetings, vote for the CBA, run for union office, and take advantage of union discounts as long as the employee remained a member in good standing by paying monthly dues (JX 40). Biggs-Adams testified that the Union’s executive board decided to waive the initiation fee due to the Nevin’s claims to the bargaining unit employees that the Union only wanted to make money, and because there had been no CBA for 2 years and the Union could not file any grievances or arbitrate any disputes as a result (Tr. 216–217).
14. September 30: Assignment of Portland Trailblazer’s Work

The parties stipulated that on or about September 30 Respondent assigned the work of shooting video at Portland Trailblazers games to an individual who does not belong to either Unit. Respondent did not notify the Union of this decision (JX 1).

15. October 4: Union Bargaining Bulletin 30

On October 4, the Union, in bargaining bulletin 30, informed its members that they would only be getting one and a half days to bargain every 2 months, rather than 2 days every month. The Union also informed its members that Respondent had yet to respond to its “full package to resolve all open items, including wages in April” (JX 17 at 42). Again, the Union informed its members that Respondent sought to vary their healthcare costs each pay period and as a result, employees should receive a “big wage increase.” The Union also noted that Respondent proposed to remove overtime after 8 hours in a workday. Finally, the Union informed members of the initiation fee waiver they offered that month.

16. October 7 and 9: Bargaining Sessions

The parties began negotiations on October 7 by discussing Respondent’s August 15 counterproposal for the union business article. The Union continued to oppose the proposal because the Union would be responsible for any legal fees due to the indemnification clause. Furthermore, the Union opposed Respondent’s $50 processing fee for dues checkoff because the Union had not been charged previously and the Union wanted justification to support Respondent’s claim of expenses Respondent incurred (Tr. 219, 379). The Union also opposed the language changes Respondent proposed to the Union’s “dues and initiation fee checkoff authorization form,” which is set by their internal bylaws (Tr. 378; JX 6(l)). For example, Respondent sought to add the percentage of the non-chargeable amount (the lobbying amount) to the form (Tr. 220; JX 6(l)). Biggs-Adams testified that this percentage is difficult to calculate because the amount is recalculated annually by the Union’s headquarters (Tr. 221–222). Respondent also wanted employees to be permitted to cease dues deduction any time after 1 year passed rather than a set period to give notice (Tr. 220–221).

Later, during the afternoon of October 7, the Union presented a counterproposal to Respondent’s proposed union business article (JX 6(m)). In this proposal, the Union reiterated its offer to change the identifier for employees from their Social Security number to their time clock numbers, but did not agree to alter the dues and initiation fee checkoff authorization form.

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43 In late November and February 2020, Dingwall became aware that sports executive producer Travis Teich (Teich), who is not in the bargaining unit, was performing bargaining unit work whereby Teich listed himself as the individual to operate the video equipment (TVU) and would be going with an anchor to report on sports events (Tr. 507, 510, 512–513; GC Exh. 17 and 18). Dingwall testified that only news videographers who are bargaining unit employees operate the TVU (Tr. 510). Dingwall’s testimony was uncontradicted by Respondent, and thus, I credit his testimony. The record is unclear as to whether these instances also pertain to work performed at a Portland Trailblazers game as alleged in paragraph 13(a) of the second consolidated complaint.

44 Biggs-Adams testified that she understood that generally the parties should bargain 2 days per month; she based her understanding on the “NLRB’s general rule” (Tr. 218).
or allow Respondent to select counsel along with the Union in the indemnification proposal. Again, Respondent rejected the Union’s proposal (Tr. 222).45

Shortly thereafter Respondent presented a counterproposal to the Union on article 3 union business (JX 6(n), 6(o)). This proposal provided a different employee identifier, $50 monthly fee for dues processing, not changes to its indemnification proposal and changes to the dues and initiation fee checkoff authorization form. Pautsch testified that Respondent introduced the monthly fee to process union dues as a “bargaining chip” and “kept kind of indicating to [Biggs-Adams], you know, it’s negotiable” (Tr. 615–616).

Before bargaining ended on October 7, the parties discussed future dates for bargaining. The Union offered dates in November, but Respondent only offered dates in December (Tr. 225–226; JX 13 at 22). However, the Union’s subsequent bargaining bulletin 31 reveals that neither Respondent nor the mediator were available in November (JX 17 at 43–44; Tr. 417–418).

On October 9, the parties met again for bargaining; the parties did not meet on October 8 due to a scheduled NLRB trial (Tr. 227). Respondent provided information to the Union on Nexstar’s health, dental and vision benefit summary plan description (SPD) (JX 42). The Union had been seeking this information for the past year of bargaining to determine whether coverage was available under Respondent’s plan for abortion and gender dysphoria (Tr. 229). Biggs-Adams testified that a search through the SPD revealed that abortions would only be covered for rape or incest, and gender dysphoria was not covered (Tr. 229–230). Regardless of the healthcare coverage set forth in the SPD, the Union wanted Respondent to cover gender dysphoria treatment as well as abortions if chosen by employees (Tr. 389–390). However, Pautsch informed the Union that those matters are not covered by their healthcare plan and would not be covered (Tr. 390, 392, 687–688). Pautsch did inform the Union that he would investigate alternatives such as providing a stipend to employees for healthcare coverage outside of Respondent’s plan (Tr. 392–393). Biggs-Adams testified that the stipend worked for the Buffalo area where Respondent was also negotiating a CBA due to limited healthcare plans in that location, but Portland had better choices for healthcare (Tr. 393).

Respondent also renewed its request for the “fringe benefit programs available” through the Union (JX 42). During bargaining on October 9, Biggs-Adams testified that she reiterated that these programs are only available to union members and union membership does not become automatic on the date of hire so there would be at least a 30 day gap of any chosen benefit coverage (Tr. 230–231). In response, Respondent insisted on the relevance of the information, and that union members could be placed in the union plans while non-members would stay on the Nexstar plan (Tr. 231). Biggs-Adams rejected Respondent’s proposal and asked if Respondent would instead consider the Flex Plan (or Entertainment Industry Flex Plan) of the Taft-Hartley Trust (Tr. 231–232, 394–395, 608). Respondent indicated a willingness to...

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45 Pautsch testified that he suggested using groups and group identification numbers (Tr. 614). The record is unclear as to whether these numbers are the same as the employee clock numbers suggested by the Union. In addition, Biggs-Adams continued to point out during negotiations that Respondent’s proposal at article 3.2 was already covered in the October 15, 2018 tentative agreement 3.6.2—these proposals concerned when the Union would receive notice of a new hire (Tr. 223). Respondent then agreed with Biggs-Adams about the conflicting language (Tr. 224).

46 Biggs-Adams testified that she had an older version of the SPD (Tr. 388–389).
investigate this option as Nexstar participates in Screen Actors Guild (SAG) plans (JX 13 at 26–27; Tr. 395, 603–604, 608).

As of this meeting, the Union had still not received information on Respondent’s contribution to employee’s healthcare costs (Tr. 232–233, 390–391). Furthermore, Biggs-Adams testified that if she could determine how much Respondent contributed to healthcare costs, then she could determine whether the Union had enough money to purchase an alternative plan within the Flex Plan (or Entertainment Industry Flex Plan) of the Taft-Hartley Trust (Tr. 233). Once again, the Union reiterated that without Respondent’s healthcare contributions, the Union could not make another proposal on benefits or on wages, since healthcare costs are tied to wages. Bargaining ended for the day only 30 minutes after it began.

17. October 10: Union Bargaining Bulletin 31

On October 10, the Union sent bargaining bulletin 31 to bargaining unit employees to summarize bargaining on October 7 and 9 (Tr. 227). The Union relayed that the parties had “good conversations about the [s]hort [t]urnaround.” The Union reported that they continued to seek the cost of healthcare coverage as well as information seeking to improve coverage. The Union also informed the members that thus far in negotiations, Respondent rejected their wage proposal, wanted the Union to accept the healthcare benefits Respondent offered without fixed contractually established costs to employees, accept less vacation and holiday time, and eliminate overtime after 8 hours, one and a half times when working a sixth day, and double time when working a seventh day. The Union noted that bargaining sessions were scheduled next for December 9 and 10, and January 14 and 15, 2020 (Tr. 334, 418, 648). The Union stated that they offered dates in November but neither Respondent nor the mediator were available (JX 17 at 43–44; Tr. 418–419).

18. October 14: Respondent’s Union Update/Recent [Union] Activities Memorandum to All Bargaining Unit Employees

On October 14, Nevin sent a memo to all bargaining unit employees. This memo began with a title in bold and all caps, “BEWARE: CARRIE BIGGS-ADAMS’ OCTOBER TRICK.” Nevin addressed the Union’s waiver of initiation fees for new members during the month of October. Nevin warned employees that this was a “trap to steer clear of” in his opinion. Nevin continued by questioning whether Biggs-Adams was doing employees a “favor” or a “dirty ‘trick’.” Nevin questioned why the Union’s executive board had never waived initiation fees in the past, and opined that initiation fees should “NEVER” have been this high which is why Respondent continued to raise the issue with Biggs-Adams and would “continue to resist her attempts to require it in a new contract.” Nevin then asserted that the Union was discriminating against members who had paid the initiation fee in the past and would be filing an unfair labor practice charge. Nevin alleged that Biggs-Adams is not being truthful with employees as to why the initiation fees at the facility are higher than other Nexstar television stations. Thereafter, Nevin further alleged that the initiation fees are “likely” due to the high salaries and expenses Biggs-Adams and two other officials received. Nevin also claimed that the Union would increase monthly dues, and stated in italicized bold, “Who knows what they

47 Pautsch testified that Respondent included Biggs-Adams salary because she had spoken about Respondent’s executive compensation (Tr. 641).
will sneak through the next time if they get the opportunity to do so?” Finally, Nevin urged employees to “make the decision,” not to “fall prey to her trickery,” and “you would do better to hold onto your hard-earned money” (JX 43).

Biggs-Adams testified that the waiver of initiation fees was not a “trick,” but instead a well-thought decision by the executive board to counter Nevin’s numerous memorandums to employees about the initiation fee amount (Tr. 235). Biggs-Adams testified in response to Nevin’s urging that employees not pay union dues, that Nevin’s memo was “outrageous” and not surprising considering the “vein of a number of nasty memos that Mr. Nevin had sent to [Biggs-Adams] or distributed about [Biggs-Adams] to the union membership and the bargaining unit (Tr. 236).


On December 6, in bargaining bulletin 32, the Union informed its members that its focus for the upcoming bargaining session would be healthcare coverage and benefits (JX 17 at 45; Tr. 238–239).

20. December 9 and 10: Bargaining Sessions

On December 9, prior to the parties meeting together before noon, Respondent provided information in response to a November 22 email Biggs-Adams sent to Pautsch (JX 47). However, this response continued to not provide the information Biggs-Adams sought—specifically the amount of contribution by Respondent to the healthcare plan (Tr. 248–249, 398; JX 60(a) and (b)). In its December 9 response with information, Nevin asked Biggs-Adams to reconsider the Union’s refusal to provide the information requested in the August 19 information request (JX 33, 47). However, Nevin also referred to the “Entertainment Industry Flex Plan” (JX 47). Biggs-Adams testified that she believed Nevin was referring to the Flex Plan of the Taft-Hartley Trust. The Flex Plan, though, was not discussed between the parties until the October bargaining sessions (Tr. 250–251).

Once the parties met together, despite the information provided by Respondent that morning, Biggs-Adams continued to seek the employer’s contribution to the employees’ healthcare costs. Finally, Respondent provided this information Biggs-Adams had sought since January (Tr. 699–700; JX 47 and 48). Early that afternoon, Biggs-Adams sent the Flex Plan as well as a few other healthcare plan summaries to Respondent (JX 49(a) – (f); Tr. 253–255, 609). Biggs-Adams testified that she intended to propose these plans depending on the amount of money Respondent would allot as she wanted to avoid employees unnecessarily changing healthcare plans or paying more money (Tr. 255, 397). After a caucus among Respondent’s negotiators, the mediator reported to the Union that Respondent wanted to stay with their own healthcare plan rather than the Flex Plan (Tr. 255–256, 610–611; JX 14 at 20). Biggs-Adams then told the mediator to inform Respondent that the Union had no healthcare proposal without talking to their membership and reminded her that the Union still did not have a wage proposal from Respondent (JX 14 at 20; Tr. 256, 396).49

48 Based on the bargaining history and various information requests, it appears that Nevin was referring to Respondent’s August 15, not August 19, information request (JX 33).
49 On December 10, the Union sent a health care survey to all bargaining unit employees (JX 17 at 47-48).
The following day, December 10, Biggs-Adams arrived late to bargaining due to the death of a union official (Tr. 259). The mediator began to explain that the parties had been bargaining for 42 sessions with 16 sessions in her presence. The mediator expressed concerns that the parties were not making progress and needed to somehow get to an agreement (Tr. 260). The Union expressed a desire to resolve healthcare and wage issues (Tr. 261). However, Respondent continued to balk at proposing set healthcare costs for employees as in the expired CBA (Tr. 262); Pausch testified that he hoped that Biggs-Adams would reconsider their healthcare proposal and denied ever refusing to discuss healthcare (Tr. 612–613).

As for wages, Pautsch told Biggs-Adams to make a better wage offer, but she declined to bargain against herself as she had submitted a proposal to Respondent on April 24 (Tr. 264; JX 14 at 22). Pautsch testified that the information he provided to Biggs-Adams regarding Buffalo was essentially his way of conveying to the Union what Respondent would accept (Tr. 646, 690–691). Biggs-Adams testified that she told Pautsch that Respondent had been hiring employees at a wage rate higher than the minimum amounts set forth in the expired CBA (Tr. 404). Thus, the minimum wages should be raised in the CBA along with increases in wages by percentages (Tr. 264–265). Respondent continued to refuse the Union’s wage proposal and did not set forth its own wage proposal as Pautsch saw a “danger” in offering a proposal (Tr. 646). At the hearing, Pautsch testified that his bargaining strategy was to not offer a wage proposal until the end of bargaining (Tr. 594). Bargaining ended in the early afternoon due to Pautsch’s schedule (Tr. 266–267). Prior to the end of bargaining, Pautsch stated that the “elephant in the room” was the Union’s initiation fees, and that Respondent would not collect the fees (Tr. 265, 428).

After bargaining ended, Biggs-Adams sent Respondent an email asking for additional information regarding Nexstar’s healthcare plan costs for 2020 (JX 50). The parties also communicated via email regarding the next dates for bargaining. Despite previously agreeing to January 14 and 15, Pautsch could no longer meet on those dates due to CBA bargaining at another Nexstar location and proposed other dates in January (Tr. 647–648). Biggs-Adams emailed Pautsch that they had all agreed to those dates, but then offered to move bargaining to January 23 and 24 and schedule the following dates for February 11 and 12 (Tr. 267–268, 275–279, 333; JX 51).


On December 10, in bargaining bulletin 33, the Union informed its members that Respondent continued to reject their wage proposal, and that the Union asked Respondent to make a full economic offer. The Union still did not know what Respondent’s healthcare proposal would cost to bargaining unit employees. The Union also noted that although bargaining had been set for January 14 and 15, 2020, the mediator would no longer be available on those dates,\(^\text{50}\) and thus bargaining had been moved to January 23 and 24, 2020 (JX 17 at 49–50; Tr. 335). The parties also appeared to agree to bargain on February 11 and 12, 2020, although Respondent never confirmed these dates (JX 51 and 52).

\(^{50}\) Apparently, the Union and mediator had a misunderstanding on the January dates; the mediator was available on January 14 and 15, 2020. However, Respondent confirmed that they were not available on January 14 and 15, 2020 (JX 51; Tr. 336–337).

The parties stipulated that on or about January 2, 2020, Respondent assigned the work of setting up the morning television program to an individual who was not in either Unit. Respondent did not notify the Union of this decision (JX 1).

23. January 2020: Vacation Policy Change

Hansen testified that on about January 6, 2020, Respondent changed its vacation policy (Tr. 470).\(^{51}\) Previously, employees selected their vacations by seniority except during the sweeps months of February, May, and November (Tr. 470–471, 506–507; GC Ex. 15).\(^{52}\) With the change in the vacation policy, Respondent permitted only one photographer to take time off during the first week in July rather than two as previously allowed (Tr. 471–472, 506–507). Respondent stipulated that sometime in January 2020 one Unit photographer would be given leave from July 2–5, 2020, the scheduled dates of the Summer 2020 Portland Waterfront Blues Festival, which was later cancelled (GC Exh. 3; Tr. 286, 506).\(^{53}\) Respondent did not notify the Union of this decision. In contrast, in 2019, Respondent permitted two Unit photographers to take leave from July 4–7, the dates of the Summer 2019 Portland Waterfront Blues Festival (JX 1). For 2021, Hansen testified that Respondent has not permitted any photographer to take time off during the first week of July (Tr. 473–475; GC Exh. 16).

D. Respondent Withdraws Recognition of the Union and Removes the Union Bulletin Boards

On January 8, 2020, Respondent advised the Union in writing that it was withdrawing recognition from the Union for both Units (Tr. 311). Nevin wrote to Biggs-Adams that he and others in management had a “‘good-faith reasonable doubt’, based on substantial objective evidence” that the Union had lost majority support in either of the Units (JX 55).\(^{54}\) Nevin and Pautsch testified that Respondent based its decision on comments from employees to managers over the prior year or longer, an informal poll among managers, dwindling attendance at union events scheduled during bargaining, employees hired after the CBA expired who had not joined the Union, dissatisfaction with the negotiation process which had been a “long process” whereby the parties had been bargaining for two and a half years with a “long ways to go towards ratifying an agreement,” employees who served on the Union’s bargaining committee no longer did so, and high turnover at the facility based on exit interviews with employees (Tr. 665–667, 702, 783–794, 798; GC Exh. 19).\(^{55}\)

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\(^{51}\) Dingwall testified that the change in vacation scheduling occurred after the January 8 meeting when Respondent informed the employees that the Union would no longer be recognized (Tr. 506). Thus, the record is unclear when the change in the vacation policy occurred.

\(^{52}\) July is also a sweeps month, but Hansen testified that July is generally not recognized for vacation purposes because it is a summer month (Tr. 473).

\(^{53}\) The parties’ stipulation states July 2–5, 2019 but these dates appear to be a typographical error since the dates refer to the upcoming 2020 Portland Waterfront Blues Festival.

\(^{54}\) Pautsch testified that he drafted this letter (Tr. 664).

\(^{55}\) Rashleigh’s email to Biggs-Adams, Dingwall and Hansen on January 9, 2020 regarding Nevin’s comments during the 3 p.m. meeting on January 8, confirms Nevin’s testimony that the basis for withdrawing recognition of the Union included the inability to reach a successor CBA along with the cost of thee initiation fees and monthly union dues to employees (GX Exh. 7).
Since January 8, 2020, Respondent has continued to refuse to recognize the Union as the exclusive bargaining representative of the Units’ employees; Respondent continues to refuse to bargain the successor CBA as well (JX 1; JX 58; Tr. 441–442). On that same date as withdrawing recognition of the Union, Respondent admittedly removed the union bulletin boards at the facility and did not notify the Union of this decision (JX 1; GC Exh. 8; Tr. 293–294, 454).

In support of its withdrawal of recognition, Respondent’s witnesses provided uncorroborated, hearsay testimony about conversations they had with employees. Specifically, Nevin testified that from October 2019 to January 2020 several employees expressed their concern with the Union since they had not received a wage increase in 3 years, and employees in both Units preferred to remove the Union and replace it with another labor organization, or with no labor organization at all (Tr. 785, 792). Nevin testified that there were Union and non-Union members who spoke to him directly or to other members of management about their dissatisfaction and frustration with the Union and the bargaining process (Tr. 784). Nevin testified that digital content producer Chelsea Wicks (Wicks) left her employment with Respondent, in part, because of the lack of union representation, no agreement reached on a CBA, and no wage increase in 3 years (Tr. 790–791). Nevin stated that videographer Ben Moore (Moore) transferred to another Nexstar location due to harassment, high union initiation fees and monthly dues, and the contentious nature of the Union (Tr. 791). Nevin testified that digital content producer Jordan Aleck (Aleck) spoke to him several times about the divisive nature of the Union, and that she did not want to be part of a divided newsroom (Tr. 791). Nevin testified that videographer Brian Watkins (Watkins) approached him that “they were going to take a vote, and that they—they felt strongly that there was not a majority support of the Union” (Tr. 792). Nevin also spoke to assignment editor Paul Birmele (Birmele) who left employment with Respondent but expressed concern about union representation and that the Union did not have majority support based on internal polling (Tr. 792–793, 797). Nevin spoke with Director Tom Westarp (Westarp) who called him one weekend and asked him how to remove the Union (Tr. 793–794). Finally, Nevin testified that editor Christian Montes (Montes) approached him in late 2019 for a wage increase because he had not had an increase in 3 years (Tr. 802).

56 On January 6, 2020, Biggs-Adams sent a confirming email to Respondent regarding the upcoming agreed bargaining dates along with which party owed fees for the conference room (JX 52; Tr. 282). However, on January 8, 2020, Respondent withdrew recognition from the Union. Then, on January 9, 2020, Newell cancelled the January 23 and 24, 2020 bargaining dates; Newell also cancelled the meeting rooms reserved for bargaining on February 11 and 12, 2020 (GC Exh. 9). However, due to the meeting location’s cancellation fee, the Union owed $1,000 to the meeting site (GC Exh. 2, 10; Tr. 296, 444).

57 The Union posted their negotiating memorandums as well as any other pertinent material for the bargaining unit employees on the bulletin boards. These two bulletin boards were in the employee break area and near the news department (Tr. 458–459). Bulletin boards are covered in the parties’ expired CBA (Tr. 459; JX 2).

58 I do not credit Nevin’s testimony on the time frame as to when these conversations occurred. Based on Respondent’s March 26, 2020, position statement to the Regional Director for Region 21 of the NLRB, only Nevin’s conversation with Wicks occurred between October 2019 and January 2020. In this position statement, Pautsch disclosed that Nevin’s conversations with Watkins occurred in March 2018, November 2018, February 2019, and May 2019. Nevin’s conversation with Moore occurred in June 2018. Nevin’s conversations with Westarp occurred in April and May 2019. Nevin’s conversation with Birmele occurred in July 2019. Nevin’s conversations with
Union, expressed frustration with the Union, or wanted to not pay union dues or initiation fees, Nevin referred them to the National Right to Work Foundation (Tr. 802).

Wenger testified that prior to his retirement in mid-November, the conversation he had with employees who had spoken to him about the Union occurred months and years prior to Respondent withdrawing recognition of the Union (Tr. 749, 757–758). Wenger testified that in the summer of 2019 digital content producer Cambrie Juarez (Juarez) approached him upset because she did not want to pay the Union’s monthly dues and initiation fee, and felt threatened with termination if she did not pay those amounts (Tr. 749). Juarez asked how she could get out of the Union or not be in the Union (Tr. 749). Wenger testified that creative services producer Derric Crooks (Crooks) told him when first hired by Respondent that he did not want to be in a Union and what did he need to do to not join the Union (Tr. 753). Wenger spoke to digital content producer Kelly Doyle (Doyle) who did not want to join the Union due to the “expensive dues and fees,” and she wanted to know how to not join the Union (Tr. 753–754).

Wenger spoke to Watkins who also wanted to know how to get out of the Union (Tr. 754). When Respondent hired maintenance engineer Levan Funes (Funes), Funes had prior experience with NABET and did not want to join the Union due to the “expensive dues and fees,” and she wanted to know how to get out of the Union (Tr. 754–755).

Brown testified that he sent Nevin an email on December 18 explaining his conversation with videographer Douglas Key (Key). Brown wrote that Key told him that employees were not happy with Biggs-Adams and that they wanted to remove the Union. Key told Brown that he had 12 yes votes, and only needed 19 votes to pass. Later, Key told Brown that Watkins and he were working on a decertification vote for January 2020, and that almost all the photographers were against the Union. Brown also wrote that maintenance editor Vivian Coday (Coday) and Funes asked him how to get the Union out of the facility (Tr. 814–815). Brown wrote that maintenance engineer Chris Thibodaux (Thibodaux) told him he does not want the Union at the facility and would not pay their initiation fee and monthly dues (Tr. 815).

Brown testified that videographer Jahaad Harvey (Harvey) asked him why Biggs-Adams sent him a letter that he needed to pay monthly dues after Respondent stopped deducting the dues from his paycheck, and if he must pay monthly dues, he did not support the Union and wanted them out of the facility (Tr. 816).60 Finally, Brown wrote that Westarp told him that he wanted the Union out of the facility and had been talking with Key (R. Exh. 6; Tr. 812). Brown testified that these conversations with Coday, Funes, Harvey and Westarp occurred “probably” in late 2019 because “negotiations were really stalling and people were wanting to find out what was going on, and

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60 Counsel for the General Counsel in its post hearing brief argues that Brown’s conversation with Harvey also violated Section 8(a)(1) of the Act when Brown verbally agreed with Harvey’s mother that the Union was “starting to get desperate” when they waived the initiation fee (Tr. 830–833; GC Br at 53, fn. 26). I decline to find an additional violation of the Act.
they were really getting frustrated” (Tr. 812).

Brown also referred employees to the National Right to Work Foundation for any questions or concerns about the Union (Tr. 814–815).

The majority of Nevin, Wenger and Brown’s testimony is hearsay, but I permitted such testimony in the event this testimony was corroborated. Ultimately most of the testimony was self-serving and uncorroborated. Respondent relied upon managements’ testimony which is non-probative hearsay. The Board has rejected such hearsay evidence of purported employee dissatisfaction to establish a loss of majority status. See Port Printing Ad & Specialties, 344 NLRB 354, 357 at fn. 9 (2005), enf’d, 192 Fed.Appx. 290 (5th Cir. 2006). Furthermore, aside from the testimony of one employee, the General Counsel requests that an adverse inference be drawn against Respondent’s failure to call any current employee to testify about what they told Nevin, Wenger, and Brown (GC Br. at 48–49). Respondent presented no reasons why they could not call the current employees as witness, and as such I draw an adverse inference that if called to testify, the witnesses would not corroborate Respondent’s witnesses’ testimony. See Queen of Valley Hospital, 316 NLRB 721 fn. 1 (1995) (adverse inference rule applies only when a party fails to call a witness who may reasonably be assumed to be favorably disposed to that party).

The only bargaining unit employee who testified was videographer Douglas Key (Key).

Key, who continues to be a union member, testified that Watkins and he sought to remove the Union from October 2019 to January 2020 and sought to bring in a “better union” (Tr. 764–767). Key testified that Watkins, Thibodaux, videographer chief William Cortez (Cortez), and he spoke to one another about removing the Union, and getting a “better union” (Tr. 766–768). Key testified that in a group setting, employees would discuss the Union and voice their dissatisfaction (Tr. 768–769). Initially Key could not recall all the names of the individuals to whom he spoke despite his recollection being refreshed with the lists of bargaining unit employees (Tr. 769–774). However, after prompting, he identified videographer Karl Petersen (Petersen), videographer Richie Roberson (Roberson), videographer Robby Sherman (Sherman), videographer Andrew Bissett (Bissett), Juarez and unidentified employee “Jay” as employees who did not want the Union, who did not know what the Union was doing for employees, or why they were in the Union (Tr. 770–772).

Key testified that he spoke to Brown from October 2019 to January 2020 about employees being unhappy with the Union (Tr. 775). On several occasions, Key asked Brown about other unions in the area and what Brown’s thoughts were on those unions (Tr. 775). Key admitted on cross-examination that the employees with whom he spoke were unhappy about

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61 I could not credit Brown’s testimony as it was based on uncorroborated hearsay except for his conversations with Key, who testified. Brown’s testimony as to his conversations with other employees is unreliable in that he could not recall when these conversations occurred. Furthermore, the December 18 email to Nevin does not clearly set forth when these conversations occurred with employees other than Key.

62 Key testified credibly as to his desire to remove the Union, but his testimony about conversations with other employees as to their position on the Union at the facility is again uncorroborated hearsay. I do not credit such testimony.

63 Brown testified that during his conversations with Key in December 2019, Key told him that he believed he had 12 votes to remove the Union but needed 19 (Tr. 810). Brown testified that Key told him that Watkins and he were working to remove the Union from the facility (Tr. 810–811). Key did not corroborate the details Brown offered in his testimony.
paying dues, but that he thought the employees he named also wanted to remove the Union or not have union representation (Tr. 776).

Thereafter, on January 8, 2020, Nevin sent an email to employees about “exciting and informative information” to be shared that day during three meetings (10:15 a.m., 3 p.m., and 7 p.m.) (JX 56; Tr. 532–533). During these meetings, held in the main conference room, Nevin announced that Respondent would no longer recognize the Union (JX 56; Tr. 451, 453, 498–499, 533). Nevin explained that based on meetings he held with employees Respondent did not believe that the Union retained majority support. Nevin informed the employees that no changes would be made to their working conditions. Respondent stipulated that it informed notified employees on or about January 8, 2020, that employees in the Units would soon be receiving a 1.5 percent wage increase, and Respondent did not notify the Union (JX 1). Hansen, Dingwall, and Rashleigh each attended more than one of these meetings, and contemporaneously documented what occurred during the meetings they attended (GC Exh. 4, 5, 6, 7). Their testimony about what was said by Nevin during these meetings was uncontradicted by Respondent’s witnesses.

According to Hansen, who emailed Biggs-Adams her contemporaneous recollection of events after the 10:15 a.m. meeting she attended, Nevin told the employees, “We can’t give any raises for 45 days because it could look like we are incentivizing an anti-union vote” (Tr. 454; GC Ex. 4).64 Hansen asked Nevin what would happen to the bargaining proposals raised thus far, and Nevin responded that nothing would change at the time. When Hansen asked Nevin if the withdrawal of recognition was in response to the Union’s allegation that Respondent engaged in surface bargaining, Nevin said that their decision was not based on the allegation but rather that bargaining had been occurring for two and a half years without progress (GC Exh. 4; Tr. 455). Hansen testified that Nevin also told employees that they would no longer need to pay union dues, had not needed to pay dues since the CBA expired, and would no longer provide payroll information to the Union to collect dues (Tr. 457–458; GC Exh. 4).

Dingwall,65 Rashleigh,66 and Hansen67 attended the 3 p.m. meeting led by Nevin, along with Brown, Kurz and Newell (Tr. 452, 459–460, 498–500, 533, 536). Dingwall testified that Nevin told the employees that he had “exciting news” because the Union no longer had majority

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64 Pautsch testified that the Board’s decision in Johnson Controls, Inc., 368 NLRB No. 20 (2019), led Respondent to believe that they had to wait 45 days during which time the Union could file for an election (Tr. 649–650). However, as will be discussed further, the Board’s decision in Johnson Controls concerns the anticipatory withdrawal doctrine which is not applicable under these sets of facts.

65 Dingwall testified that he has worked at KOIN-TV for the past 10 years, shoots and edits daily news stories, works with reporters occasionally, and is supervised by Brown (Tr. 497). Dingwall has been a member of the Union for his entire time of employment with KOIN-TV and is a shop steward (Tr. 497–498). As shop steward, Dingwall represents employees in disciplinary meetings and acts as a “go-between” between bargaining unit employees and Respondent (Tr. 498). Dingwall testified credibly as his testimony was corroborated by Hansen, Rashleigh, and Respondent’s witnesses along with his contemporaneous notes.

66 Rashleigh testified that he started working at KOIN-TV in April 2004 and gathers video and sound for news stories and edits these stories. Rashleigh has been supervised by Brown since he began working at KOIN-TV (Tr. 498, 530–531). Rashleigh has been a member of the Union since he began working at KOIN-TV and is a shop steward (Tr. 531). Rashleigh’s testimony is credited as it was corroborated by Hansen, Dingwall, and Respondent’s witnesses as well as his contemporaneous notes.

67 Hansen’s contemporaneous notes from these meetings, along with the testimonies of Dingwall, Rashleigh, and Respondent’s witnesses corroborate her testimony, and further enhance her credibility.
support based on objective evidence, so Respondent was not obligated to recognize the Union (Tr. 499). Dingwall and Rashleigh testified that Nevin told them other than the removal of the bulletin boards nothing could change for 45 days during which time the Union could fight the withdrawal or do nothing (Tr. 499–500, 534, 537; GC Exh. 6). Nevin told the employees that Respondent did not conduct any polling of employees but based their decision on employees coming into his office telling him they no longer wanted to be in the Union (Tr. 460, 500–501, 534; GC Exh. 5 and 6).

During this meeting, Nevin claimed that five other Nexstar stations “went down this road and none of them are union now.” Nevin also informed the employees that the inability to get to a successor CBA was a factor in Respondent’s decision to withdraw recognition from the Union. Nevin told the employees that the cost of the Union’s initiation fee and monthly dues were unacceptable and another reason that Respondent withdrew recognition from the Union. After the meeting, Rashleigh photographed the locations where the bulletin boards had been placed before being removed (Tr. 537). He sent those photos to Biggs-Adams (Tr. 537; GC Exh. 8).

On January 16, 2020, Nevin sent the bargaining unit employees a follow-up memo concerning Respondent’s decision to withdraw recognition from the Union. Nevin addressed questions raised about voting rights and an NLRB election. Nevin further cautioned that if the Union is informing the employees otherwise, the Union is tricking the employees to try to “entice” employees to join or not quit the Union (JX 57; Tr. 297–298). Biggs-Adams testified that she never told employees that they were not eligible to vote in an NLRB election (Tr. 297–298).

On January 17, 2020, the Union wrote again, in bulletin 34, to its membership regarding Respondent’s withdrawal of recognition on January 8, 2020. Biggs-Adams noted that with an expired CBA the Union cannot force arbitration on any grievances but that unilateral changes also could not be imposed. Biggs-Adams cited items that have remained the same since the CBA expired which included employees’ healthcare costs, overtime after 8 hours, time and a half for 6th day of work, double time for 7th day of work, and paid leave. The Union set forth a summary of the history of bargaining for the successor CBA. The Union noted that Respondent would not meet monthly for 2 days as they requested. Respondent had also changed its position for dues check off and initiation fees. The Union requested that the bargaining unit employees sign petitions that indicate that they wanted the Union to continue to represent them in bargaining (JX 17 at 51–53; Tr. 299–300).

On January 21, 2020, Biggs-Adams emailed Newell, Nevin and Pautsch about their failure to confirm the bargaining dates as set forth in her January 6, 2020 email. Biggs-Adams also stated that Respondent had not responded to her on their plans and the parties’ expense obligations for bargaining. Furthermore, Biggs-Adams told Respondent that they had a continuing obligation to bargain (JX 52; Tr. 282). However, Newell repeatedly emailed Hansen, informing her that Respondent would not participate in bargaining and any leave requests she had made for bargaining were denied (JX 58; Tr. 444–445).
1. Respondent Prohibits Employees from Discussing the Union and Passing Out Union Flyers

On January 20, 2020, while getting coffee, Hansen spoke to assignment editor Travis Box (Box) about what happened to the Union (Tr. 463). During this conversation, Brown spoke behind them and said he did not think they should be talking about the Union (Tr. 463). Hansen testified that she was surprised that Brown was walking up behind her and monitoring her discussion (Tr. 464–465). Box walked back his desk and Brown left (Tr. 465). Hansen immediately sent an email to Biggs-Adams documenting this conversation (GC Exh. 11).

Again, on January 23, 2020, Hansen handed a union bulletin to one employee to pass along to another employee (Tr. 466–467). Hansen testified that she went back downstairs and passed Brown in the hallway. A few minutes later, Brown asked to speak with Hansen and angrily told her to stop handing out flyers and stated, “We are not recognizing the Union,” and you cannot pass out the bulletins (Tr. 467–468). Again, Hansen immediately sent an email to Biggs-Adams documenting the conversation (GC Exh. 12).68

2. The Union Gathers Signatures for Petition

After the January 8, 2020 meetings held by Respondent, Hansen asked more than ten employees how they felt about the Union. Based on these discussions, in early February, Biggs-Adams worked with union counsel to have members sign petitions showing that the Union maintained majority support (Tr. 301, 311–312). These petitions were circulated by Hansen, Rashleigh and Dingwall (Tr. 301, 462–463, 478, 485, 504, 519–520, 538, 541–542, 842–844).69

This petition, dated February 18, 2020, states:

“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”

(GC Exh. 13).

Rashleigh specifically testified that he asked employees to sign the petition if they wanted the Union to continue to represent them in successor CBA negotiations (Tr. 541). Hansen testified that she asked employees to sign the petition in her presence (Tr. 847). Hansen and Dingwall testified that some employees were nervous to sign the petition due to fears of retaliation (Tr. 478, 505). Thus, the Union worked with Jobs for Justice, a local organization, to find a neutral reviewer of signatures so that the names would not be presented to Respondent (Tr. 478).

68 I credit Hansen’s testimony on these two conversations as they are corroborated by her contemporaneous emails to Biggs-Adams. Furthermore, Brown did not testify about these conversations. As such, I take an adverse inference that if asked, Brown would have corroborated Hansen’s testimony.

69 Contrary to accusations by Respondent, the Union denied ever offering to waive employees’ initiation fees if they signed the petition (Tr. 486, 520, 542).
Retired Catholic priest Jack Mosbrucker (Mosbrucker) reviewed the signatures, verified their authenticity, and certified that the Union maintained majority support (Tr. 302, 506, 538; JX 46(a)). Mosbrucker specifically checked and confirmed that the names who signed the petition matched the names of the most recent list of bargaining unit employees provided by Respondent which was the November 2019 payroll record, and counted the matched names and signatures on the petition (Tr. 547–551). Mosbrucker certified that the signature count resulted in 19 of 28 in the technical unit and 7 of 13 in the production unit in confirming proof of continued majority status for the Union to represent the Units’ employees as their exclusive bargaining representative (GC Exh. 13; Tr. 302–303, 552–563). The parties stipulated that Mosbrucker did not compare employees’ signatures but compared the November 2019 payroll list with the employee names on the petition, not their signatures (Tr. 563–565, 679–680; JX 46, 46(a), 67). The Union did not share the names of those who signed the petition with Respondent due to a fear of reprisal (Tr. 306).

On February 20, 2020, Biggs-Adams sent a letter to Nevin regarding Respondent’s withdrawal of recognition as well as failure to bargain in good faith. The Union continued to request the December 2019 earnings for bargaining unit employees for dues deduction. The Union also demanded that bargaining resume, that Respondent unlawfully removed the union bulletin boards, and that changes to wages, hours and working conditions at the facility could not lawfully be made (GC Exh. 14; Tr. 303–304). Along with this letter, the Union submitted and hand-delivered a copy of the certification of majority support to Nevin (GC Exh. 13 and 14; Tr. 303, 552–553). Respondent never answered the Union’s February 20, 2020 letter and petition (Tr. 305).

3. Respondent Unilaterally Implements a Wage Increase for Bargaining Unit Employees

On March 17, 2020, Respondent sent an email to employees, informing them of “good news” regarding their compensation (JX 59; Tr. 515). During small group meetings, Nevin, Brown and Newell notified employees in the Units that they would soon be receiving a retroactive 1.5 percent wage increase (Tr. 475–477, 515–517). On or about March 25, 2020, Respondent stipulated that it implemented a 1.5 percent retroactive wage increase from January 1, 2020 for employees in the Units (Tr. 515–516). Respondent did not notify the Union of this decision (JX 1).

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70 The Union used the document at JX 46(a) to determine who was employed by Respondent and in the bargaining unit as of November and December 2019. Biggs-Adams testified that she used the payroll list provided by Respondent as of November 2019. Because Newell refused to provide the December 2019 payroll list, Biggs-Adams manually added and removed employees from the November 2019 based on who had been hired or left employment with Respondent to create the list at JX 67 (Tr. 842). As evidence of those in the bargaining unit as of January 2020, Respondent created a document found at R. Exh. 4. However, Hansen testified that this document is not accurate as at least one employee in the bargaining unit is missing (Tr. 847–854).

71 Mosbrucker testified that he has conducted numerous cards checks for labor organizations when they are organizing (Tr. 549). Mosbrucker is a member of Jobs for Justice, and its subgroup, The Faith Labor Committee. He is active in supporting labor organization (Tr. 550–551).

72 The list of bargaining unit employees at JX 67 was compiled by Biggs-Adams, but Respondent does not stipulate that this list was accurate as of January 8, 2020 when Respondent withdrew recognition from the Union (Tr. 680–681).
4. Respondent Prohibits the Discussion of Wages Amongst Employees and Threatens Rescission of Wage Increases

In March, April or May 2020, during Dingwall’s performance review via Zoom video technology, Brown notified Dingwall that he might be entitled to a 1 percent additional raise (in addition to the retroactive 1.5 percent raise) (Tr. 514). Dingwall responded that he learned that other employees received a 2 percent wage increase (Tr. 514). Dingwall testified that Brown became visibly angry and told Dingwall that employees should not be talking about their salaries, wanted to know to whom he had spoken, and said he could revoke their raises if he chose (Tr. 514). These instructions shared by Brown was new to Dingwall (Tr. 514–515).

Legal Analysis

Whether Respondent Failed and Refused to Engage in Good Faith Bargaining Since June 21, 2017

Paragraph 12(a) and (b) alleges that since about June 21, 2017, Respondent failed and refused to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act. The General Counsel argues that Respondent engaged in surface bargaining, insisted upon proposals that were predictably unacceptable to the Union, refused to meet at reasonable times and places for bargaining, conditioned negotiations on non-mandatory subjects of bargaining, and denigrated the Union in the eyes of the Units’ employees. In support of this allegation, the General Counsel alleges that Respondent harbored an intent to avoid reaching an agreement by introducing evidence of: (1) prior Board decisions whereby Respondent has been found to have violated the Act during the course of negotiations for the successor CBA; (2) since March 23, regularly defaming and denigrating the Union to bargaining unit employees via written communications; (3) failing to meet in May and July 2019 to bargain; (4) cancelling bargaining on January 23 and 24, 2020 and cancelling bargaining scheduled for January 14 and 15, 2020; and (5) failing and refusing to bargain over health insurance since April 24.

Section 8(d) of the Act requires both the employer and the union to negotiate with a “sincere purpose to find a basis for agreement.” Atlanta Hilton & Tower, 271 NLRB 1600, 1603 (1984) (quoting NLRB v. Herman Sausage Co., 275 F.2d 229, 231 (5th Cir. 1960)). An employer is obligated to make “some reasonable effort in some direction to compose his differences with the union, if [Section] 8(a)(5) is to be read as imposing any substantial obligation at all.” Ibid. (quoting NLRB v. Reed & Prince Mfg. Co., 205 F.2d 131, 135 (1st Cir. 1953), cert. denied 346 U.S. 887 (1953) (emphasis in original)). Thus, “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), enf’d. sub

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73 This March, April or May 2020 conversation between Brown and Dingwall appears to be alleged as violating the Act in second consolidated complaint paragraphs 16(c) and (d); however, the date alleged in the second consolidated complaint, June 25, 2020, appears to be an error based on Dingwall’s testimony. This error in date is inconsequential. See, e.g., Williams Enterprises, 301 NLRB 167, 168 (1991) (5-month date discrepancy between complaint and judge’s finding immaterial because “the issue … was the same regardless of when the violation occurred” and the allegation was fully litigated), enf’d. in relevant part 956 F.2d 1226 (D.C. Cir. 1992).

74 Dingwall’s testimony was not refuted by Brown, and I credit Dingwall’s testimony.
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)).

To determine whether a party has violated its statutory obligation to bargain in good faith, the Board examines the totality of the party’s conduct, both at and away from the bargaining table. *CP Anchorage Hotel 2, LLC, d/b/a Hilton Anchorage*, 370 NLRB No. 83, slip op. at 2 (February 10, 2021); *Phillips 66*, 369 NLRB No. 13, slip op. at 4 (2020). The Board must decide whether the party is engaging in hard but lawful bargaining to achieve a contract that it considered desirable or is engaged in surface bargaining by unlawfully endeavoring to frustrate the possibility of arriving at any agreement. *Hilton Anchorage*, supra (citing *Atlanta Hilton & Tower*, supra at 1603); *Phillips 66*, supra (citing *West Coast Casket Co., Inc.*, 192 NLRB 624, 636 (1971), enfd. in relevant part 469 F.2d 871 (9th Cir. 1972). The Board considers several factors when evaluating a party’s conduct for evidence of surface bargaining. These factors include delaying tactics, the nature of the bargaining demands, unilateral changes in mandatory subjects of bargaining, and efforts to bypass the union. *Atlanta Hilton & Tower*, supra at 1603. In addition, the Board has reiterated that in some instances, specific bargaining proposals “may become relevant in determining whether a party was making a sincere effort to reach an agreement.” *Phillips 66*, supra, slip op. at 4 fn. 9. It has never been required that a respondent must have engaged in each of those enumerated activities before it can be concluded that bargaining has not been conducted in good faith. *Altorfer Machinery Co.*, 332 NLRB 130, 148 (2000).

Prior to determining whether based on the totality of Respondent’s conduct, it has failed and refused to bargain in good faith since June 2, 2017, engaging in surface bargaining, I must first resolve the allegations the General Counsel’s pled in second consolidated complaint paragraphs 8 and 10. Paragraph 7 of the second consolidated complaint lists the various Board decisions finding Respondent to have violated the Act during the course of bargaining for a successor CBA. These violations concerned several failures to provide information requested by the Union during bargaining, making unilateral changes after the CBA expired, and unlawfully disciplining Hansen. I find that Respondent’s continual violations of the Act during the two and a half years of bargaining supports the failure and refusal to bargain in good faith and is evidence of surface bargaining.

Respondent argues that the Union violated the Act during this time as well and engaged in bad faith bargaining. While the Union was found to have violated the Act once by an administrative law judge for not providing information to Respondent, that decision was not appealed to the Board. Furthermore, although complaints were issued against the Union, these matters were resolved with unilateral settlements; these settlements effectively dispose of those allegations. In sum, and as I will discuss specifically, the Union’s conduct during bargaining both during and away from negotiation sessions is not bad faith bargaining. In contrast, the Board has found that Respondent has violated the Act four times from 2017 to 2018 while bargaining for a successor CBA, and I find further violations in 2019 and 2020 based on allegations in this second consolidated complaint.
Whether Respondent Defamed and Denigrated the Union in its Written Communications to Employees

At second consolidated complaint paragraph 8(a), the General Counsel alleges that Respondent regularly defamed and denigrated the Union to the unit employees via bargaining memos thereby violating Section 8(a)(5) and (1) of the Act. Respondent argues that its memos were responsive to the Union’s “highly critical and derogatory” memos regarding KOIN-TV, and that both parties’ memos are protected by Section 8(c) of the Act (R Br. at 43). As explained below, the Union’s communications to bargaining unit employees set forth the facts of bargaining while Respondent’s communications were replete with false information and untruths about Biggs-Adams and the Union. Respondent’s communications served to undermine the Union to the bargaining unit employees and served to create dissension in the workplace which was used by Respondent to unlawfully withdraw recognition from the Union. Moreover, Respondent’s communications are evidence of bad faith bargaining, and support the surface bargaining allegation.

In NLRB v. Gissel Packing Co., supra at 617, the Supreme Court stated that an employer’s free speech right to communicate its views to its employees is “firmly established,” and cannot be infringed by the labor organization or the Board. Furthermore, Section 8(c) of the Act simply implements the First Amendment by requiring that the expression of any views, argument, or opinion shall not be evidence of an unfair labor practice as long as that expression does not contain any threat of reprisal or force or promise of benefit thereby violating Section 8(a)(1) of the Act. Id. Moreover, an employer may convey to its employees its position during negotiations for a CBA. United Technologies Corp., 274 NLRB 1069, 1074 (1985), enfd. sub nom. NLRB v. Pratt & Whitney, 789 F.2d 121 (2d Cir. 1986). The Board will not “police or censor propaganda.” Linn v. United Plant Guard Workers of America, 383 U.S. 53, 60 (1966); see also Long Island College Hospital, 327 NLRB 944, 947 (1999) (overenthusiastic rhetoric is protected speech unless it is knowingly false or made with reckless disregard for the truth). However, what is not permitted is making false or reckless statements to bargaining unit employees with an aim of undermining union support. See General Electric, 150 NLRB 192 (1964) (bargaining briefs compounded the effects of employer’s bad faith conduct during bargaining and at the table, and, predictably, fueled employees’ dissatisfaction with the union); Miller Waste Mills, Inc., 334 NLRB 466, 467 (2001) (Board upheld finding that employees became alienated from the union due to belief that it prevented a wage increase).

I find that Respondent denigrated the Union its bargaining memos thereby violating Section 8(a)(5) and (1) of the Act. To be clear, the tone of these memos, written by Pausch and issued under Nevin’s signature, became personal in nature, attacking Biggs-Adams. But such tactics are permitted under Section 8(c) of the Act. Sears, Roebuck & Co., 305 NLRB 193 (1991) (“words of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1)”)). However, Respondent’s communications cannot be protected by Section 8(c) of the Act when Nevin made false and reckless statements to the bargaining unit employees.

Beginning in 2019, Nevin began conveying to employees that their initiation fee and monthly dues were much higher than other Nexstar locations with union representation. Nevin then consistently informed employees in these memos that Respondent was looking at how to
lower their monthly dues and the initiation fee. Specifically, Nevin wrote in March 2019 that Respondent was trying anything they could do to reduce union members out of pocket expenses considering the “unfortunate and reprehensible” amount of union initiation fee and monthly dues. In May 2019, Nevin informed employees that they were trying to discuss the “exorbitantly high initiation fees and monthly dues” that the employees were “saddled with.” On July 22, Nevin again wrote that the one issue that stood out for Respondent was the initiation fee which were “difficult” for Respondent to accept, and Nevin closed his memo with the comment, “Important decisions lie ahead for all of us.” On August 20, Nevin accused Biggs-Adams of “highway robbery” for the amount of the initiation fee and monthly dues and claimed that they were trying make the employees’ “burden” to the Union less.

In response to Respondent’s continued campaign to reduce the initiation fee and monthly dues, the Union waived the initiation fee if bargaining unit employees became members of the Union in October. On October 14, Nevin wrote to the bargaining unit employees that the Union and Biggs-Adams could increase the amount of the initiation fee and monthly dues whenever they wanted and implied that the Union could make further changes to its membership and thus the employees would be better off holding on to their “hard-earned money.” Nevin also cautioned employees to beware of Biggs-Adams’ trick, and that the amount of these fees is not justified despite Biggs-Adams’ explanation. In several memos, Nevin suggested that the initiation fee was being used improperly by Biggs-Adams and the Union so they could “wine and dine” in Portland and receive high salaries. Essentially, Respondent accused Biggs-Adams and the Union of charging high initiation fees to defraud the bargaining unit. Respondent’s suggestions without any evidence denigrated the Union and Biggs-Adams.

Meanwhile, when confronted during bargaining by Biggs-Adams, Respondent denied trying to negotiate the amount of the monthly dues and initiation fee but instead argued that because these amounts were high, in their opinion, they would not collect the monies. Such disingenuous comments made by Respondent at the bargaining table belies the months-long effort that Respondent took to convince the employees that they would be working to reduce their monthly dues and initiation fee. Such an effort clearly undermined employee confidence in the Union as some employees, such as Key, expressed dissatisfaction with their labor representative and spoke about removing the Union as their representative.

Furthermore, Respondent falsely accused the Union of not bargaining for wages when the evidence shows that Respondent failed to present a wage proposal. The Union submitted a wage proposal to Respondent on April 24 but thereafter on May 31 Nevin argued to the bargaining unit employees that the wage proposal by the Union was “not good faith bargaining” despite never presenting a counter proposal to the Union on wages. On June 20, Nevin falsely accused the Union of using stall tactics to avoid discussing wages as well as the high initiation fee and monthly dues. In fact, Respondent would not present a wage proposal and refused to discuss wages with the Union in a tactic admitted by Pausch at the hearing; Pausch testified that he did not plan to present a wage proposal to force the Union to relent on their wage proposal. By 2019, the bargaining unit employees had not received a wage increase in over 3 years since the CBA expired, and Respondent’s false statements to the bargaining unit employees certainly would undermine confidence in the Union.
The General Counsel cites to *Safeway Trails*, 233 NLRB 1078, 1081 (1977) where the Board determined that the employer violated Section 8(a)(5) and (1) of the Act through its communications with bargaining unit employees regarding negotiations which sought to “driv[e] a wedge between the Union’s chosen negotiator […] and the union membership” with “[n]ot-so-subtle suggestions” that the presence of that chosen negotiator was the “primary reason that labor peace had not been reached.” Similarly, Nevin in the May 31 memo to bargaining unit employees blamed Biggs-Adams for stalled negotiations and hoped that Biggs-Adams would stay “focused on what matters to [members] most […]].” On June 20, Nevin in his memo to bargaining unit employees accused Biggs-Adams of being unprepared and engaged in “highly unprofessional and reckless conduct.” In a July 22 memo to the bargaining unit employees, Nevin again accused Biggs-Adams of stalling, being unfocused, and coming unprepared to engage in substantive negotiations. On August 20, Nevin in his memo to bargaining unit employees continued his attack on Biggs-Adams, claiming that she “wasted times with lectures and language which is not focused on employees.” While these statements could be considered personal attacks on Biggs-Adams, the consistent, persistent comments on Biggs-Adams’ negotiations clearly served to undermine the bargaining unit employees’ confidence in her representation of their interests at the bargaining table.

Respondent argues that such memos were lawful considering Biggs-Adams’ mobilization efforts along with the Union’s comments on Respondent’s executives’ salaries. I disagree. The Union’s conduct and statements in their memos to the bargaining unit employees is lawful conduct. The Union’s conduct does not amount to bad faith bargaining as these statements are protected by Sec. 8(c) of the Act. Furthermore, mobilization is a tactic that is employed by the Union, and there is no evidence such actions independently violated the Act. In contrast, Respondent’s false and misleading statements in the memos to the bargaining unit employees crossed the line protected by Section 8(c) of the Act. Thus, Respondent violated Section 8(a)(5) and (1) of the Act by denigrating the Union its bargaining memos since March 2019. These communications to bargaining unit employees also supports the bad faith bargaining allegation and is evidence of surface bargaining.

**Whether Respondent Met and Bargained with the Union at Reasonable Times**

At second consolidated complaint paragraph 8(b) and (c), the General Counsel alleges that Respondent failed to meet and bargain with the Union for the successor CBA in May and July 2019, and alleges that in January 2020 Respondent cancelled bargaining scheduled for January 23 and 24, 2020, and on January 14 and 15, 2020, double-booked its representative to bargain in another state on the same dates previously agreed and then also cancelled the rebooked bargaining sessions due to its double-booking. Respondent argues that the evidence is insufficient to establish any violation of the Act as much of the scheduling did not impact the little progress the parties made during negotiations (R Br. at 50–51).

Section 8(d) of the Act requires that an “employer and the representative of the employees … meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment…” The Board considers the totality of the circumstances when determining whether a party has satisfied its duty to meet at reasonable times. *Calex Corp.*, 322 NLRB 977, 978 (1997), enfd. 144 F.3d 904 (6th Cir. 1998) (examining respondent’s “overall conduct”).

42
Here, contrary to the General Counsel’s argument, I do not find that Respondent violated the Act as alleged in paragraphs 8(b) and (c). While it is true that the parties did not negotiate in May and July 2019, I do not find that Respondent refused to meet and bargaining at reasonable times since March 23, 2019. The addition of the mediator to negotiations contributed to some of the scheduling issues. Although the Union did not agree with the need for a mediator, nevertheless, the Union permitted a mediator to be added to the process. In January 2019, the parties agreed to bargain in April 2019. Only during the months of February and May did Respondent decline to negotiate those months due to sweeps; negotiations did not occur in July, but Biggs-Adams testified that Respondent did not decline to negotiate that month due to sweeps. After the January 2019 bargaining session, the parties met and bargained in April, June, August, October, and December. Regardless of the reasons for why the parties did not meet more frequently, there is no evidence in the record that the Union requested more dates for bargaining and Respondent refused. Furthermore, the evidence shows that Respondent only cancelled negotiations once for January 14 and 15, 2020, when Pautsch learned he needed to negotiate another CBA. While the Board has not accepted the “busy negotiator” defense as a justified reason for cancelling negotiation sessions, the evidence presented indicates that Pautsch only cancelled bargaining one time due to a scheduling conflict. See *Kitsap Tenant Support Services*, 366 NLRB No. 98, slip op. at 6 fn. 14 (2018). Pautsch offered other dates in January 2020 to negotiate, and thus the parties agreed to bargain on January 23 and 24, 2020. Respondent then cancelled these dates along with February 2020 dates for bargaining due their decision to withdraw recognition.

The General Counsel argues that Respondent repeatedly refused to agree to additional bargaining dates or provide reasons for unavailability (GC Br. at 40). However, I do not find that the parties discussed these issues to the extent that the General Counsel claims. Instead, as Biggs-Adams credibly testified, finding mutual dates to bargain amongst the Union, Respondent and mediator and finding negotiation space proved difficult. Such an admission does not support a violation against Respondent. In contrast, the Board has found violations of Section 8(a)(5) and (1) when an employer canceled scheduled meetings without proper reasons and refused a union’s “repeated but fruitless requests for additional meetings.” *Sunbelt Rentals, Inc.*, 370 NLRB No. 102 (2021) (citing *Lancaster Nissan*, 344 NLRB 225, 227–228 (2005) (rejecting employer’s excuses that its representatives were often busy or unavailable where employer met with union only 12 times during the initial certification year, canceled several meetings, and “turned a deaf ear” to union’s repeated requests for additional meetings), enf’d. 233 Fed. Appx. 100 (3d Cir. 2007)). Thus, complaint paragraphs 8(b) and (c) are dismissed.

### Whether Respondent Bargained in Good Faith Regarding Healthcare

At second consolidated complaint paragraph 10, the General Counsel alleges that the Union requested to bargain healthcare on April 24, but since that time Respondent failed and refused to bargain in good faith, and from April 24 to December 2019, Respondent delayed responding to the Union’s healthcare proposal. In response, Respondent argues that the employer first proposed a healthcare article in January 2019, and thereafter, requested information that the Union refused to provide. Furthermore, Respondent argues that the parties discussed the healthcare proposal many more times during negotiations in 2019 (R Br. at 53–54).
To summarize the parties’ healthcare negotiations: In January 2019, Respondent proposed that bargaining unit employees would be covered by their benefits plan. Specifically, Respondent proposed that bargaining unit employees’ costs would change based upon their gross earnings with a maximum of 10.4 percent of gross earnings. Respondent could also make any changes to these benefits at any time. The parties discussed Respondent’s healthcare proposal further during these bargaining sessions where the Union questioned whether abortion and gender dysphoria would be covered in Respondent’s healthcare plan. Pautsch told Biggs-Adams he would investigate the issue, but ultimately did not provide a response until October 2019 when he provided the Union with the SPD for the plan so they could research the answer themselves.

Also prior to presenting a counterproposal, the Union requested specific information regarding Respondent’s health care plan, including employer contributions. Respondent replied immediately with the information requested except with the employer contributions. Hence, in January 2019, Respondent presented a healthcare proposal where the employees’ contributions would change each pay period, but the amount of the employer’s contribution continued to be unknown. Respondent did not provide the employer contribution amounts until December 2019, almost 1 year later.

Subsequently, in March, Nevin in his memo to bargaining unit employees told the employees that Respondent’s healthcare costs were low (even though Respondent had not provided any economic terms to support such a claim to the Union), and that Biggs-Adams focused on coverage of specific medical issues which was “counterproductive and a waste of time.” Despite not receiving the information requested on the amount of employer contribution, in April 2019, the Union presented a counterproposal to Respondent’s health care proposal. The Union proposed that the employees’ contributions would not exceed the amount capped by the expired CBA. The Union also requested specific healthcare issues be covered.

Rather than respond to the Union’s request, in August 2019 Respondent requested information about the Union’s benefits exclusively for union members. This request for information was denied by the Union, and subsequently resulted in an unfair labor practice complaint which was settled unilaterally with the General Counsel. During the October 2019 bargaining session, Respondent continued to question alternative plans but ultimately rejected these options. Finally, in December 2019, Respondent provided the amount of employer contribution to the employees’ healthcare plans. Respondent’s failure to provide this information for almost 1 year is evidence of bad faith bargaining. Regency Service Carts, Inc., 345 NLRB 671, 675 (2005) (employer’s delay in providing the union with relevant information indicates its failure to bargain in good faith).

Regarding the health care proposal, I find that Respondent engaged in bad faith bargaining. In Mid-Continent Concrete, supra, the Board noted that the although the Act does not compel either party to make concessions or agree to a proposal, the parties should have a “sincere desire to enter into good faith negotiations with an intent to settle differences and arrive at an agreement” with “a completely closed mind and without the spirit of cooperation” not meeting the requirement of the Act. In addition to failing to provide the employer contribution amounts as requested by the Union, Respondent appears to have been bargaining with a closed mind and no intention of cooperating during negotiations. The course of Respondent’s conduct
during bargaining leads me to this conclusion. As summarized above, after Respondent’s healthcare proposal where an employee’s contribution would vary based on the employee’s paycheck and whose benefits could change at-will, the Union requested information and presented its own proposal. In the interim, Respondent quickly conveyed to the bargaining unit employees that their healthcare costs would remain low (without providing the specific information to the Union) and that the Union was wasting time on the inclusion of additional medical coverage. Thus, as early as March 2019, Respondent maintained a resolve that it would not negotiate with the Union on the healthcare proposal. See American Meat Packing Corp., 301 NLRB 835, 836 (1991) (comments meant to proscribe a take-it-or-leave-it bargaining which is evidence of bad faith bargaining). Moreover, Respondent’s healthcare proposal would subject the employees to the same healthcare terms as non-bargaining unit employees. When the parties further discussed healthcare in August 2019, Respondent sought additional information from the Union without still providing what economic contributions they would be offering. This request for information on the Union’s membership benefits served to stall negotiations, as the parties began vigorously arguing about the information sought. Thereafter, Respondent claimed to consider the Union’s alternative proposals on healthcare plans, but then summarily rejected the plans as too expensive. In October 2019, Pautsch even argued to the Union that other labor organization agreed to Respondent’s plan and that the Union should be no different. Respondent’s course of conduct regarding healthcare demonstrates that they would not agree to any proposal other than their own. Thus, I find that Respondent violated Section 8(a)(5) and (1) of the Act as described in paragraph 10 and supports the surface bargaining allegation.

Respondent’s Overall Conduct During Bargaining

The totality of the circumstances shows that Respondent engaged in surface bargaining where Respondent’s actions during bargaining as well as conduct away from the bargaining table demonstrates that Respondent sought to frustrate bargaining or prevent an agreement from being reached. Surface bargaining allegation cases are fact-specific and are difficult to differentiate with lawful hard bargaining. Here, I have thoroughly reviewed the documentary and testimonial evidence and Respondent’s course of conduct in 2019 as well as prior violations of the Act during bargaining convinces me that Respondent engaged in surface bargaining. While the parties reached tentative agreements on several articles in 2017 and 2018, in 2019 bargaining came to a stand-still where no tentative agreements were reached. Alongside the number of violations of the Act the Board found during bargaining the successor CBA, the violations I have found also provide evidence of surface bargaining since June 21, 2017. Overall, it appears that Respondent negotiated with a closed mind, only sought to reach an agreement on its own terms and failed to meet its obligation to negotiate with an intention to settle differences and arrive at a mutually satisfactory agreement. As early as March 2019, Nevin informed bargaining unit employees that Respondent was “pessimistic” that an agreement could be reached with the Union.

In addition to the violations I have found thus far in this decision, along with those previously found by the Board, I find that Respondent’s failure to present a wage proposal is significant in proving Respondent engaged in surface bargaining. The Union presented a wage proposal in violation of Section 8(a)(5) and (1) of the Act as described in paragraph 10 and supports the surface bargaining allegation. But Respondent’s failure to present a wage proposal to the Union is evidence under the totality of the circumstances

75 The General Counsel withdrew paragraph 9(b), (c) and (d) which concerns Respondent’s failure to present a wage proposal as a violation of Section 8(a)(5) and (1) of the Act. Thus, I do not find an independent violation of the Act. But Respondent’s failure to present a wage proposal to the Union is evidence under the totality of the circumstances
proposal in April 2019, but Respondent failed to present a counterproposal to the Union. Respondent, rather than negotiate with the Union, informed bargaining unit employees that the Union’s wage proposal was not “reality.” Respondent later criticized the Union’s wage proposal as “out there.” Pautsch testified at the hearing that his strategy was not to present a counterproposal on wages and simply reject the Union’s proposal in October 2019 without any counterproposal. Respondent’s tactic for wage proposals is similar to their tactic during the bargaining process in 2019 where Respondent rarely provided a counterproposal to the Union’s last offer. Pautsch reiterated that other labor organizations accepted lesser wage increases, and he expected the Union to do this same. As with the healthcare proposal, Respondent wanted the Union to accept what other labor organizations had accepted. An employer’s refusal to consider a union’s proposal, without explanation, to be a factor in finding an employer failed to bargain in good faith. Mid-Continent Concrete, supra at 260. Certainly, Respondent may seek changes to the expired CBA, but rejecting the Union’s proposal without a reasonable explanation does not follow Respondent’s obligation to make some effort to attempt a compromise to reach common ground. Such intransigence by Respondent also supports a finding of surface bargaining where Respondent only sought to reach a CBA with its own terms. Furthermore, the Union consistently approached Respondent with counterproposals on the various outstanding articles while Respondent consistently insisted on their own proposals. For example, regarding the use of Social Security numbers as employee identifiers, the Union sought alternatives to address Respondent’s concerns despite the identifier set by the Union’s headquarters. Respondent would not negotiate with the Union regarding paid leave or overtime. Again, Respondent took a take-it-or-leave-it attitude that went beyond hard bargaining. In total, I find that Respondent’s conduct establishes that it was bargaining without a sincere effort to resolve differences to reach an agreement. Respondent violated Section 8(a)(5) and (1) of the Act by refusing and failing to bargain in good faith, and this bad faith bargaining proves that Respondent engaged in surface bargaining.

Respondent argues that the Union, not Respondent, engaged in bad faith bargaining, including by failing, refusing, and unreasonably delaying providing relevant information for the purpose of collective bargaining on several occasions. About health insurance, Respondent states that the Union failed to provide information, and as such based upon Respondent’s unfair labor practice charge, the General Counsel issued a complaint against the Union. Respondent also argues that Biggs-Adams routinely and frequently disparaged, defamed, and disrespected Respondent’s bargaining committee by making rude, abrasive, and vulgar comments at and away from the bargaining table designed to discourage dialogue and compromise (R Br. at 40–43).

I do not agree with Respondent’s contentions. While it is true that the Union did not provide information sought by Respondent, those instances do not overcome Respondent’s bad faith, take-it-or-leave-it approach to bargaining. Moreover, the allegations of failure to provide information have been settled and should not be considered. The Board has long held that “a settlement agreement disposes of all issues involving pre-settlement conduct unless prior violations of the Act were unknown to the General Counsel, not readily discoverable by investigation, or specifically reserved from the settlement by the mutual understanding of the parties.” Hollywood Roosevelt Hotel Co., 235 NLRB 1397, 1397 (1978). But even if I were to consider Respondent’s allegation that the Union engaged in bad faith bargaining by not

of surface bargaining.
providing requested, relevant information, Respondent should have still continued to engage in bargaining over benefits even if they did not receive the information. Moreover, as found above Respondent’s memos to bargaining unit employees denigrated the Union in the eyes of the employees. In contrast, the Union’s memos to the bargaining unit, while attacking the salaries of Respondent’s executives, did not falsify the facts of negotiations. Respondent, in its post-hearing brief, cites the Union’s comments of “union busting” and “anti-union” and “corporate greed” as evidence of denigration and defamation by the Union (R Br. at 46). Respondent also complained of the Union’s mobilization campaign. Like Respondent’s right to use propaganda in its communication with bargaining unit employees, the Union may also legally seek to sway influence to reach a favorable CBA for its Units with communications to third parties that contain harsh rhetoric. Such conduct does not cross the line unlike Respondent’s communications where Respondent provided false information to employees and sought to undermine their belief in the Union. In addition, while Biggs-Adams admitted her course language at times during negotiations, Respondent cannot credibly claim that its negotiators did not speak harshly to Biggs-Adams as well. At various times in 2019, negotiations became tense and the demeanor of the participants changed accordingly. Such conduct is not evidence of bad faith bargaining.

The Union assumed an obstinate position only on the amount of the initiation fees and monthly due. As Pautsch stated, the “elephant in the room” was the union business and security proposals. However, these two proposals only remained an issue because Respondent constantly raised its concerns about the amounts with bargaining unit employees as well as at the bargaining table. Respondent then insisted on changing language in the dues authorization form which is an internal union document. Furthermore, the parties continued to disagree about the Respondent’s proposal to collect a fee for dues withholding as well as the indemnity language in the union business article. While Respondent may argue that the Union insisted on the language in the CBA, the evidence also shows that Respondent kept raising the issue of the amount of the initiation fees thereby derailing discussion on other topics. The facts simply do not support Respondent’s contention that the Union engaged in bad faith bargaining.

Whether Respondent Implemented Unilateral Changes to Working Conditions Without Notice and an Opportunity to Bargain to the Union

At paragraphs 13 and 15 of the second consolidated complaint, the General Counsel alleges that Respondent implemented unilateral changes by assigning bargaining unit work to non-bargaining unit employees which was stipulated as occurring on or about September 30, 2019 and January 2, 2020, changed the vacation policy in January 2020, removed the union bulletin boards on January 8, 2020, and implemented a wage increase for bargaining unit employees.

76 The General Counsel withdrew paragraph 11 which concerns Respondent’s insistence on the Union’s changing its dues and initiation fee structure as a condition to reach a CBA as a violation of Section 8(a)(5) and (1) of the Act. Thus, I do not find an independent violation of the Act. But Respondent’s continual discussion of the Union’s initiation fee, monthly dues, and dues authorization form language is additional evidence of surface bargaining under the circumstances.

77 In its brief, Respondent reiterates its request for the information to prove that the Union violated Section 8(b)(5) when charging “excessive” initiation fees (R Br. at 65 fn. 13). I stand by my ruling during the hearing that the Union was not required to provide the documents requested by Respondent in its subpoena duces tecum. These documents have no relevance to this proceeding.
employees in March 2020. Respondent admits that they did not notify the Union of these decisions.

Section 8(a)(5) of the Act requires an employer to provide its employees’ representative with notice and an opportunity to bargain before instituting changes in any matter that constitutes a mandatory bargaining subject. *NLRB v. Katz*, 369 U.S. 736 (1962); *Toledo Blade Co.*, 343 NLRB 385 (2004). A subject is considered a mandatory subject of bargaining as defined in Section 8(d) of the Act which includes wages, hours and other terms and conditions of employment. Wages are a mandatory subject of bargaining. *Purple Communications*, 370 NLRB No. 26 (2020). A unilateral change in a mandatory subject of bargaining is unlawful only if it is a “material, substantial, and significant change.” *Alamo Cement Co.*, 281 NLRB 737, 738 (1986).

In addition, after a CBA expires, an employer has a statutory duty to maintain the status quo on mandatory subjects of bargaining until the parties reach a new agreement or a valid impasse in negotiations. See *Triple A Fire Protection*, 315 NLRB 409, 414 (1994), enf'd. 136 F.3d 727 (11th Cir. 1998), cert. denied 525 U.S. 1067 (1999). The substantive terms of the expired agreement generally determine the status quo. See *PG Publishing Co., Inc. d/b/a Pittsburgh Post-Gazette*, 368 NLRB No. 41, slip op. at 3 (2019); *Hinson v. NLRB*, 428 F.2d 133, 139 (8th Cir. 1970). The Board may also consider any extracontractual past practices that are “regular and long-standing, rather than random or intermittent.” *Sunoco, Inc.*, 349 NLRB 240, 244 (2007). Neither contract coverage nor waiver doctrines apply following the expiration of a collective-bargaining agreement. *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61, slip op. at 2–4, 8 (2020) (“[P]rovisions in an expired collective-bargaining agreement do not cover post-expiration unilateral changes unless the agreement contained language explicitly providing that the relevant provision would survive contract expiration”).

Respondent admits that a manager on about September 30 performed bargaining unit work shooting video during a Portland Trailblazers game, and on about January 2, 2020 assigned the work of setting up the morning television show to a non-bargaining unit employee. However, Respondent argues that the expired CBA permitted this work provided that bargaining unit employees were not permanently replaced and that the status quo had been maintained (RBr. at 69). Respondent cites to Article 12.4 of the expired CBA. Neither the General Counsel nor Charging Party presented any argument since Respondent admitted to not notifying the Union of the decision. However, the expired CBA does not contain any language which expressly provided that Article 12.4 would survive the expiration of the agreement. Dingwall credibly testified that in the past, managers did not perform this work. Thus, Respondent had an obligation to provide the Union notice and an opportunity to bargain. Therefore, Respondent violated Section 8(a)(5) and (1) as described in paragraph 13(a) of the second consolidated complaint.

However, no party presented arguments about the allegation that on January 2, 2020, the morning television show was set up by a non-bargaining unit employee. As such, I only have the complaint allegation and parties’ stipulation which do not offer any arguments of persuasion to

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78 Article 12.4 states: there is no restriction on managers and/or supervisors performing bargaining unit work. Use of this provision shall not lead to managers and/or supervisors permanently replacing NABET represented employees.
me. Thus, the burden of proof lays with the General Counsel, who has not proven this alleged unilateral change, and I dismiss paragraph 15(d) of the second consolidated complaint.

I do find that per paragraph 13(b) of the second consolidated complaint, Respondent violated Section 8(a)(5) and (1) of the Act when unilaterally changing how many photographers would be permitted to take paid leave the week of July 4. Again, Respondent admitted not notifying the Union. Hansen and Dingwall credibly testified that in the past, two photographers were permitted to take paid leave during the week of the Portland Waterfront Blues Festival, but in early January, Respondent only permitted one photographer to take paid leave that week.

Respondent argues that the change in how many photographers could take vacation that week is of no consequence since the Portland Waterfront Blues Festival was cancelled in 2020 (R Br. at 69). Respondent further argues that nevertheless the changes to how many photographers could take vacation that week could not be a unilateral change since they had withdrawn recognition from the Union. As discussed within, Respondent’s withdrawal was unlawful. Regardless, Respondent had an obligation to maintain the status quo after the expiration of the CBA where the expired CBA did not provide for Respondent’s right to unilateral action. Nexstar Broadcasting, 369 NLRB No. 61 (2020). Thus, Respondent violated Section 8(a)(5) and (1) of the Act.

Moreover, Respondent also violated Section 8(a)(5) and (1) of the Act when removing the union bulletin boards on January 8, 2020 and when announcing and implementing a 1.5 percent retroactive wage increase for all bargaining unit employees as of March 2020, as described at paragraphs 15(a) through (c) of the second consolidated complaint. Respondent admitted to not notifying the Union of any of these decisions and presented no argument in its post hearing brief. At Article 3.2 of the expired CBA, the Union may use up to two bulletin boards at Respondent’s facility to post and disseminate union information. Respondent had an obligation to maintain the status quo and failed to do so. As discussed herein, Respondent’s withdrawal of recognition of the Union was unlawful, and Respondent’s unilateral removal of the bulletin boards also violates Section 8(a)(5) and (1) of the Act. Likewise, Respondent must maintain the status quo regarding wages which is clearly a mandatory subject of bargaining. Respondent’s notice and implementation of the wage increase violated Section 8(a)(5) and (1) of the Act.

\[\text{Whether Respondent Coerced Employees in the Exercise of Their Section 7 Rights}\]

At paragraph 16 of the second consolidated complaint, the General Counsel alleges that Respondent also violated Section 8(a)(1) of the Act when on January 20, 2020, Brown informed Hansen that she should not talk about the Union when he overheard a conversation between Hansen and another employee discussing the Union and when on January 23, 2020, Brown told Hansen she could not pass out union bulletins. Also, at paragraph 16 of the second consolidated complaint, the General Counsel alleges that Brown in the spring of 2020 told Dingwall during his performance appraisal that employees should never discuss their wages and that he could revoke those wage increases if he wanted. Respondent does not dispute Hansen and Dingwall’s testimony, and admits the allegations (R Br. at 78). Thus, I find that Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 16 of the second consolidated complaint.
Even if Respondent did not admit in their post hearing brief that they violated the Act as described in paragraph 16 of the second consolidated complaint, I would still find that Respondent violated the Act. Section 7 of the Act provides that, “employees shall have the right to self-organization, to form, join, or assist labor organizations…” Section 8(a)(1) of the Act makes it unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of those rights, and the test for evaluating if the employer violated Section 8(a)(1) is “whether the statements or conduct have a reasonable tendency to interfere with, restrain or coerce union or protected activities.” Hills & Dales General Hospital, 360 NLRB 611, 615 (2014). Here, Brown unequivocally told Dingwall that employees should not discuss wages, and that he could revoke wage increases if he chose. When an employer prohibits employees from discussing wages or benefits with one another, such a rule will be found unlawful and violate Section 8(a)(1) of the Act. The Boeing Company, 365 NLRB No. 154, slip op. at 4 (2017). Furthermore, discussing terms and conditions of employment including wages is the essence of protected Section 7 activity. Union Tank Car Co., 369 NLRB No. 120, slip op. at 2 (2020).

Whether Respondent Lawfully Withdrew Recognition of the Union

Section 8(a)(5) of the Act requires that an employer must recognize and bargain with the labor organization that its employees have properly chosen. Once a labor organization is recognized, it enjoys continued presumption of majority support by employees. But when the union has been the collective-bargaining representative of the employees for over a year that presumption can be rebutted by the employer. The employer, which carries the burden of proof, must establish an actual loss of majority employee support before withdrawing recognition of a union. See Levitz Furniture Co. of the Pac., 333 NLRB 717, 723 (2001) (“[A]n employer may not ‘withdraw recognition unless it can prove that an incumbent union has, in fact, lost majority support.’”) (overruling Celanese Corp., 95 NLRB 664 (1951), which held that employers may withdraw recognition merely by establishing an objectively based, good-faith reasonable doubt as to union’s majority support). Absent the preferred method of requesting the Board to conduct a representation election, an employer may choose at its peril to unilaterally withdraw recognition if presented with evidence of an asserted loss of majority support. See Levitz, supra at 725. If a union disputes the grounds for withdrawal of recognition, the employer must prove by a preponderance of the evidence “that the union had, in fact, lost majority support at the time [it] withdrew recognition.” Id. The employer may only rely upon evidence that existed at the time of the withdrawal of recognition. Objective evidence relied upon by the employer when withdrawing recognition may include admissions by union officials that the union no longer has majority support and written and oral statements which clearly state that the bargaining unit employees do not want to be represented by the union. See Louisiana-Pacific Corp., 283 NLRB 1079, 1080 (1987) (corroborated employee statements to supervisor may provide objective evidence to support employer’s withdrawal of recognition).79 If the employer fails to meet its

79 In Green Oak Manor, 215 NLRB 658, 663-664 (1974), the Board adopted the administrative law judge’s conclusion that the oral statements from a majority of unit employees that they did not want union representation meant that the employees no longer wanted union representation. In Green Oak Manor, the administrative law judge credited the testimony of the employer’s director which was corroborated by two current and one former employee that the employees expressed a renunciation of the union. Thus, oral statements can be considered objective evidence. Contrary to Counsel for the General Counsel’s position, I do not find that Levitz Furniture overruled the use of oral statements to prove that an employer has objective evidence to withdraw recognition from the Union (GC Br. at 47 fn. 19). But as is evident in the many cases of withdrawal of recognition, the analysis is fact specific.
burden of proof, the withdrawal of recognition is a violation of Section 8(a)(5) and (1) of the Act.

In this case, as of January 8, 2020, the day Respondent withdrew recognition of the Union, 28 bargaining unit employees belonged to the technical unit while 13 bargaining unit employees belonged to the production unit. Respondent told the employees that they had “substantial objective evidence” that the Union no longer enjoyed support of a majority of the Units’ employees. At the hearing, Nevin and Pautsch offered that the basis for Respondent’s decision was more than employee oral statements over the year prior to their withdrawal but also based on an informal poll of managers, lack of employee attendance during union meetings after bargaining sessions, the number of employees who had not joined the Union after the CBA expired, employees who stopped participating in negotiations on behalf of the Union, high turnover at the facility, and dissatisfaction with negotiations.

Unlike instances where employers may have a petition or employees’ signatures professing their desires, Respondent relied exclusively on hearsay statements from a few employees about employees’ dissatisfaction with the Union; these statements were made many months to a year before Respondent withdrew recognition. Respondent relied on only vague, subjective comments made by employees on how they could remove the Union or how they could avoid paying dues. These comments, even if relied upon despite being hearsay statements, fall far short of proving that the Union lost at actual majority support in either Unit. The comments were not corroborated or supported by other objective evidence. See Valley Nitrogen Producers, Inc., 207 NLRB 208, 214 (1973) (uncorroborated statements from employees, especially those made to supervisors, are unreliable as the employee may make statements, he feels management would like to hear). Many of these statements, if accepted as true, simply reflected the employees’ desire not to pay union dues or maintain membership in the union, not to cease having any union representation. See Kauai Veterans Express Co., 369 NLRB No. 59, slip op. at 1 (2020) (employer failed to provide objective evidence of the union’s actual loss of majority status because the petition reflected only showed that employees sought to cease membership in the union, not to cease union representation). Moreover, statements of desire to terminate union membership do not support withdrawal of recognition. Pacific Coast Supply, LLC, 360 NLRB 538, 542–543 (2014).

Respondent also relied upon subjective beliefs that the Union had lost support due to allegedly fewer employees attending union meetings after bargaining sessions and turnover at the

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80 Respondent presented no evidence from the managers’ poll. However, this poll would not be relevant to the employees’ desires to continue with or without union representation.

81 I do not credit this hearsay testimony but if I did credit this testimony, Respondent still could not prove that as of January 8, 2020, a majority of employees in the Units no longer wanted the Union to represent them in bargaining. The only bargaining unit employees who remained employed by Respondent on January 8, 2020 and who allegedly expressed any negative comments about the Union are Watkins, Westarp, Montes, Juarez, Crooks, Doyle, Funes, Key, Coday, Thibodaux, Harvey, Cortez, Petersen, Roberson, Sherman, Bissett, and “Jay.” Even counting these individuals, Respondent cannot show that a majority of bargaining unit employees in the Units did not want the Union as their representative.

82 Moreover, although unnecessary, the Union presented evidence to Respondent in February 2020 that it maintained majority support amongst unit employees. By so doing, the Union sought to promote stability in its bargaining relationship with Respondent and to protect employee free choice with regard to collective bargaining representation.
facility due to union dues. The Board has determined that an employer cannot rely upon a decline in dues checkoff after the CBA expired or a low level of participation in union sponsored activities to support its claim of adequate objective evidence to withdraw recognition. See Trans-Lux Midwest Corp., 335 NLRB 230, 232 (2001) (whether a union has “majority support turns on whether most unit employees wish to have union representation, not on whether most unit employees are members of a particular union.”); Grand Lodge of Ohio, 233 NLRB 143, 144 (1977) (employee membership or financial support or level of union activity cannot be used to measure union support among unit employees); Gulfmont Hotel Co., 147 NLRB 997 (1964), enf’d. 362 F.2d 588, 1000–1001 (5th Cir. 1966) (the Board adopted the trial examiner’s findings who explained, “Employees for various reasons unconnected with their desire to have a union represent them, may fail to execute checkoff authorizations […] although the voluntary signing of checkoff authorizations by a majority in the unit may be considered evidence of a union’s majority status, the converse is not true.”). Furthermore, as of August 2019, Respondent no longer would process dues check-off based on the Board’s recent decision in Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center, 368 NLRB No. 139 (2019) (Board overruled Lincoln Lutheran of Racine, 362 NLRB 1655 (2015), and returned to the rule in Bethlehem Steel, 136 NLRB 1500 (1962), remanded on other grounds sub nom. Marine & Shipbuilding Workers v. NLRB, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964), that an employer’s statutory obligation to check off union dues ends when the collective-bargaining agreement containing a checkoff provision expires). In addition, with regard to employee turnover, the Board has “long held that new employees will be presumed to support a union in the same ratio as those whom they have replaced.” Laystrom Manufacturing Co., 151 NLRB 1482, 1484–1485 (1965), enforcement denied 359 F.2d 799 (C.A. 7, 1966). Furthermore, Respondent’s admission that they withdrew recognition due to dissatisfaction with negotiations is illuminating, and further supports the failure and refusal to bargain in good faith as well as surface bargaining allegations. Respondent had no desire to reach an agreement with the Union but instead used their frustration that the Union would not acquiesce on its proposals to provide another faulty reason to withdraw recognition from the Union. Each of these reasons by Respondent to withdraw recognition from the Union, taken individually or as whole, do not rebut the Union’s presumption of continued majority status. See Physicians & Surgeons Community Hospital, 231 NLRB 512, 514 (1977), enf’d. 577 F.2d 305 (5th Cir. 1978). These reasons do not support by a preponderance of the evidence that the employees no longer wanted the Union to represent them. Statements of criticism of negotiations also does not show that a majority of employees no longer wanted the Union to represent them. Burns International Security Services, 225 NLRB 271 (1976), enforcement denied on other grounds, 567 F.2d 945 (10th Cir. 1977). As discussed herein, much of the frustration by employees towards the Union could be due to Respondent’s disparaging, false statements about the Union during negotiation.

Respondent argues that the Board decision in Johnson Controls “expresses certain principles and policies that are equally applicable when an employer withdraws recognition following contract expiration” (R Br. at 73). Respondent is mistaken. In Johnson Controls, 368 NLRB No. 20 (2019), the Board held that an employer may announce that it will not recognize the union after the contract expires if the employer can show that the union lost majority support during the term of the agreement and the employer in the interim continues to abide by the agreement. The Board set forth certain parameters for employers and unions to follow: (1) reasonable notice to the union of no more than 90 days before contract expiration must be given by the employer, and then the employer may refuse to bargain or suspend bargaining for a
successor agreement but must continue to abide by the current agreement; and (2) if the union wants to reassert majority status, the union must file an election petition within 45 days of the employer’s notice of intent to withdraw recognition. The Board’s holding in Johnson Controls does not apply to the facts in this matter because Respondent withdrew recognition from the Union after the CBA expired, and thus could not have given notice that Respondent intended to withdraw recognition after the CBA expired. Even if these principles apply, Respondent did not announce that it planned to withdraw recognition, but instead, actually withdrew recognition, removed the union bulletin boards, and refused to abide by certain terms of the expired CBA.

Respondent attempts to relitigate the welcome letter to new bargaining unit employees as well as the waiver of initiation fees in October (R Exh. 3; JX 40). These matters were resolved, and I decline to entertain these arguments. Respondent’s attempt to obfuscate their unlawful withdrawal of recognition from the Union with the Union’s welcome letter and waiver of initiation fees in October fails. Respondent now appears to argue that it saved the employees from the Union’s “bad faith and illegal conduct” which “tainted” their right to represent employees, and thus further justified Respondent’s withdrawal of recognition (R Br. at 77–78). Not only is the argument nonsensical and paternalistic but Respondent cannot now present additional argument to support its decision to withdraw recognition. RTP Co., 334 NLRB 466, 469 (2001), enf’d. 315 F.3d 951 (8th Cir. 2003), cert. denied 540 U.S. 811 (2003) (after-acquired evidence cannot be considered as only the factors relied upon by the employer to withdraw recognition is relevant). Instead Respondent could have certainly filed a petition for a decertification election with the NLRB to clear up any confusion but withdrew recognition at its peril. Thus, Respondent’s withdrawal of recognition of the Union for each of the Units was unlawful and violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Nexstar Broadcasting, Inc. d/b/a KOIN-TV (Respondent) is, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (Charging Party or the Union) is, has been at all times material, a labor organization within the meaning of Section 2(5) of the Act, and represents the following bargaining units (the Units), appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   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 chief engineer, office clericals, professionals, 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 (aka “performer”),
office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV.

3. Respondent violated Section 8(a)(5) and (1) of the Act by defaming and denigrating the Union since March 23, 2019.

4. Respondent violated Section 8(a)(5) and (1) of the Act since April 24, 2019, by failing and refusing to bargain in good faith with the Union about health insurance and delaying responding to the Union’s April 24, 2019 health care proposal.

5. Respondent violated Section 8(a)(5) and (1) since June 21, 2017 by engaging in bad faith bargaining and overall surface bargaining by violating the Act numerous times as found by the Board during the course of bargaining, denigrating and defaming the Union in written communications to the Units’ employees and failing and refusing to bargain with the Union about health insurance and delaying in responding to the Union’s April 24, 2019 health care proposal.

6. Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union on January 8, 2020, absent an actual loss of the Union’s majority status.

7. Respondent violated Section 8(a)(5) and (1) on about September 30, 2019 by unilaterally assigning bargaining unit work to non-bargaining unit employees.

8. Respondent violated Section 8(a)(5) and (1) in January 2020 by unilaterally changing the vacation policy for the Units.

9. Respondent violated Section 8(a)(5) and (1) by unilaterally removing the union bulletin boards at the facility on January 8, 2020.

10. Respondent violated Section 8(a)(5) and (1) by announcing on January 8, 2020, during the same meeting to announce the withdrawal of recognition from the Union, that the Units would soon receive a 1.5 percent wage increase.

11. Respondent violated Section 8(a)(5) and (1) in March 2020 by unilaterally implementing a 1.5 percent wage increase for the Units.

12. Respondent violated Section 8(a)(1) in about January 20 and 23, 2020 by prohibiting employees from discussing the Union at the facility and from distributing union bulletins.

13. Respondent violated Section 8(a)(1) in March, April or May 2020, when Rick Brown (Brown) told a bargaining unit employee that the employees could not discuss wages and wage increases. On that same date, Respondent violated Section 8(a)(1) when Brown made an implied threat that if employees discussed wage increases their wage increases could be revoked.

14. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
15. Respondent has not violated the Act in any of the other manners alleged in the second consolidated complaint.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act. Specifically, having found that Respondent violated Section 8(a)(5) and (1) by changing the terms and conditions of employment for its unit employees without first notifying the Union and giving it an opportunity to bargain, I shall order Respondent to rescind the unlawful unilateral changes it made, upon request from the Union.

The General Counsel requests an affirmative bargaining schedule, which I agree is warranted in this matter due to Respondent’s dilatory tactics as well as unlawful withdrawal of recognition (GC Br. at 55–56). See UPS Supply Chain Solutions, Inc., 366 NLRB No. 111, slip op. at 2–4 (2018) (surface bargaining violations rendered appropriate a bargaining schedule requiring the parties to meet for at least 24 hours per month, and at least 6 hours per session); Caterair International, 322 NLRB 64, 68 (1996). Upon request of the Union within 15 days of the Board’s order, Respondent is required to meet on a regular basis, for a minimum of 15 hours per week until an agreement is reached, lawful impasse or mutual agreement for respite, and Respondent shall submit progress reports to the Region and the Union every 15 days. Such a remedy is appropriate as the Board set forth in its analysis in Pacific Coast Supply, supra.

Furthermore, Respondent shall make whole employee negotiators for any earnings lost while attending bargaining sessions. In this regard, backpay shall be computed in accordance with Ogle Protection Service, 183 NLRB 682 (1970), enf’d. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in New Horizons, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB 6 (2010). Again, Respondent must compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region , within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. AdvoServ of New Jersey, Inc., 363 NLRB 1324 (2016).

I will order that the employer post a notice at the facility in the usual manner, including electronically to the extent mandated in J. Picini Flooring, 356 NLRB 11, 15–16 (2010). In accordance with J. Picini Flooring, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. Id. supra at 13.

The General Counsel requests that I order that the notice be read aloud (GC Br. at 57). The Board has recognized that notice reading is an extraordinary remedy but, in this instance, I believe the facts present themselves to support such a request. Sysco Grand Rapids, LLC, 367 NLRB No. 111 (2019). Such a public reading of the notice will serve to reassure employees that their employer and its managers are bound by the Act’s requirements. Homer D. Bronson Co., 349 NLRB 512, 515 (2007) (and cited cases), enf’d. mem. 273 Fed.Appx. 32 (2d Cir. 2008). In addition, the Board recently stated in Nexstar Broadcasting, Inc., 370 NLRB No. 72, slip op. at
fn. 2, that the Board would “be forced to consider further appropriate remedies if this pattern of unlawful conduct persists.” Clearly, Respondent’s unlawful conduct persisted and extraordinary remedies are warranted. Accordingly, I recommend that Respondent be ordered to convene its employees and have a supervisor and/or agent described in paragraph 4 of the second consolidated complaint, in the presence of a Board agent, read the notice aloud to employees, or, at Respondent's option, permit a Board agent, in the presence of those supervisors and/or agents identified, to read the notice to the employees at the facility. See Bozzuto’s, Inc., 365 NLRB No. 146, slip op. at 5 (2017).

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

ORDER

Respondent, Nexstar Broadcasting, Inc., d/b/a KOIN-TV, Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (the Union), as the exclusive representative for the following bargaining units of its 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 chief engineer, office clericals, professionals, 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 (aka “performer”), office clericals, professionals, guards and supervisors as defined in the Act and all other employees of KOIN-TV.

(b) Withdrawing recognition of the Union as the exclusive bargaining representative of the Units in the absence of objective evidence that the Union has actually lost the support of a majority of the bargaining unit employees.

(c) Engaging in surface bargaining and failing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Units.

83 If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.
(d) Defaming and denigrating the Union in its written communications to bargaining unit employees.

(e) Failing and refusing to bargain in good faith with the Union about health insurance and delaying in responding to the Union’s health care proposal.

(f) Unilaterally changing the bargaining unit employees’ terms and conditions of employment including by assigning bargaining unit work to non-bargaining unit employees, changing the vacation policy, removing the union bulletin boards, and granting a wage increase without providing the Union notice and an opportunity to bargain.

(g) Promising and granting a wage increase to discourage Section 7 activity.

(h) Prohibiting bargaining unit employees from discussing the Union and their wages.

(i) Prohibiting bargaining unit employees from distributing union bulletins.

(j) Impliedly threatening to revoke wage increases for engaging in Section 7 activity.

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

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

(a) Recognize and, upon request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.

(b) Rescind the withdrawal of recognition of the Union as the exclusive collective-bargaining representative of the Units.

(c) Rescind, upon request from the Union, any changes to the bargaining unit employees’ terms and conditions of employment including assigning bargaining unit work to non-bargaining unit employees, changing the vacation policy, removing the union bulletin boards, and granting a wage increase without providing the Union notice and an opportunity to bargain.

(d) Within 15 days of the Union’s request, bargain with the Union at reasonable times, for a minimum of 15 hours per week, in good faith until full agreement is reached, lawful impasse is reached, or mutual agreement for respite is requested. Respondent shall submit progress reports to the Region and the Union every 15 days.

(e) Compensate any employee negotiators for any earnings lost while attending bargaining sessions. In this regard, backpay shall be computed in accordance with Ogle Protection Service, 183 NLRB 682 (1970), enf’d. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in New Horizons, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB 6
(2010). Again, Respondent must compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region , within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. AdvoServ of New Jersey, Inc., 363 NLRB 1324 (2016).

(f) Within 14 days after service by the Region, post at its facility in Portland, Oregon, 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 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 Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since June 21, 2017.

(g) Within 14 days after service by the Region, hold a meeting or meetings, at the facility, scheduled to ensure the widest possible attendance, at which the “Notice to Employees” is to be read to the employees by Respondent’s supervisor or agent, or at Respondent’s option, by a Board agent in the presence of Respondent’s supervisor or agent.

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

Dated, Washington, D.C. June 11, 2021

Amita Baman Tracy
Administrative Law Judge

84 If the facility is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means. Danbury Ambulance Service, Inc., 369 NLRB No. 68, slip op. 4 (2020). If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT fail and refuse to bargain in good faith with the National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, Local 51, AFL–CIO (the Union) as the exclusive bargaining representative of the following bargaining units (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 chief engineer, office clericals, professionals, 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 (aka “performer”), office clericals, professionals, guards, and supervisors as defined in the Act and all other employees of KOIN-TV.

WE WILL NOT withdraw recognition of the Union as the exclusive bargaining representative of the Units in the absence of objective evidence that the Union has actually lost the support of a majority of the bargaining unit employees.

WE WILL NOT engage in surface bargaining and fail to bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Units.

WE WILL NOT defame and denigrate the Union in our written communications to bargaining unit employees.

WE WILL NOT fail and refuse to bargain with the Union about health insurance and delay in responding to the Union’s health care proposal.
WE WILL NOT unilaterally bargaining unit employees’ terms and conditions of employment including by assigning bargaining unit work to non-bargaining unit employees, changing the vacation policy, removing the union bulletin boards, and granting a wage increase without providing the Union notice and an opportunity to bargain.

WE WILL NOT promise and grant a wage increase to discourage Section 7 activity.

WE WILL NOT prohibit bargaining unit employees from discussing the Union and their wages.

WE WILL NOT prohibit bargaining unit employees from distributing union bulletins.

WE WILL NOT impliedly threaten to revoke wage increases for engaging in Section 7 activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act.

WE WILL recognize and, upon request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.

WE WILL rescind the withdrawal of recognition of the Union as the exclusive collective-bargaining representative of the Units.

WE WILL rescind, upon request from the Union, any changes to the bargaining unit employees’ terms and conditions of employment including assigning bargaining unit work to non-bargaining unit employees, changing the vacation policy, removing the union bulletin boards, and granting a wage increase without providing the Union notice and an opportunity to bargain.

WE WILL within 15 days of the Union’s request, bargain with the Union at reasonable times, for a minimum of 15 hours per week, in good faith until full agreement is reached, lawful impasse is reached, or mutual agreement for respite is requested. WE WILL submit progress reports to Region 19 of the National Labor Relations Board and the Union every 15 days.

WE WILL compensate any employee negotiators for any earnings lost while attending bargaining sessions.

WE WILL hold a meeting or meetings, at the facility, scheduled to ensure the widest possible attendance, at which this Notice is to be read to the employees by our supervisor or agent, or by a National Labor Relations Board agent in the presence of our supervisor or agent.

NEXSTAR BROADCASTING INC., D/B/A KOIN-TV
(Respondent)

Dated _______________ By _______________
(Representative) (Title)
The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional Office set forth below. You may also obtain information from the Board’s website: www.nlrb.gov.

National Labor Relations Board, Subregion 36
1220 SW 3rd Avenue, Suite 605
Portland, Oregon 97204-2170
(503) 326-3085, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge’s decision can be found at www.nlrb.gov/case/19-CA-248735 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

![QR Code]

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE’S COMPLIANCE OFFICER, (206) 220-6284.