Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services *and* International Alliance of Theatrical Stage Employees, Local 15. Cases 19–CA–186007 and 19–CA–192068

March 12, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

On April 6, 2018, Administrative Law Judge Gerald Michael Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.[3]

We agree with the judge that the Respondent unlawfully failed to provide International Alliance of Theatrical Stage Employees, Local 15 (the Union) with specific financial information needed by the Union to assess claims made by the Respondent during bargaining. But we do not agree with the judge that the Respondent unlawfully failed to provide general financial information to the Union because we find that the Respondent effectively retracted its claim of inability to pay. Further, we reverse the judge and dismiss the allegation that the Respondent failed to bargain in good faith.

Facts

On December 18, 2015, the Union was certified as the exclusive collective-bargaining representative of the Respondent's technicians in the Seattle, Washington area. On January 4, 2016, the Union requested to bargain with the Respondent,[4] but the Respondent refused to bargain while its request for review of the Union's certification was pending with the Board. On May 23, shortly after the Board's denial of the Respondent's request for review, the Respondent contacted the Union to schedule negotiations for the parties' first collective-bargaining agreement.[5]

On June 24, the parties held their first bargaining session, in which they primarily established ground rules for bargaining. The Union also presented a partial contract proposal, which the parties discussed. Shortly thereafter, the Respondent provided the Union with information showing that full-time unit employees' current wage rates range from $15 to $28.88 per hour depending on their job classifications.

On July 19, the Union emailed its first complete contract proposal to the Respondent. Regarding economic issues, the Union proposed that the Respondent increase unit employees' wages by 73 to 120 percent depending on the job classification, pay overtime in certain circumstances where overtime is not required by Federal or State law, and make contributions to the Union's pension and health funds. Regarding noneconomic issues, the Union proposed a discipline provision that required just cause and progressive discipline, a final and binding arbitration provision, and limitations on the Respondent's ability to subcontract unit work.

On August 11, the Respondent emailed its first complete contract counterproposal to the Union. Regarding economic issues, the Respondent proposed that it would maintain the existing wage rates for current employees, set wage rates for future hires within specified ranges for each job classification, determine future wage increases during the life of the contract, pay overtime as required by Federal and State law, and provide unit employees the same benefits as unrepresented employees. Regarding noneconomic issues, the Respondent proposed a discipline provision that required a "reasonable belief"[6] but did not require progressive discipline, a grievance and arbitration provision that stated that "[t]he arbitrator's decision shall have the effect of a judgment entered upon an award made, entitling the entry of a judgment in a court of competent jurisdiction against the defaulting party who fails to carry

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

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

[3] We have amended the judge's conclusions of law and remedy and modified the judge's recommended Order consistent with our findings and legal conclusions herein. We shall substitute a new notice to conform to the Order as modified.

[4] All dates hereafter are in 2016, unless otherwise indicated.

[5] In a prior decision, the Board found that the Respondent's refusal to bargain with the Union from January 4 to May 23 violated Sec. 8(a)(5) and (1). See *Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services*, 365 NLRB No. 84 (2017) (*PSAV I*).

[6] More specifically, the discipline provision stated: "[The Respondent's] decision to discipline an employee based on his/her violation of laws, rules, regulations, and/or [Respondent's] policy shall be supported by a reasonable belief that the employee has committed an infraction."

out or abide by such decision,"[7] and a management-rights clause that gave it "sole discretion" over subjects such as discipline and subcontracting except as specifically restricted by other provisions in the proposed contract.

The parties held their next bargaining sessions on August 17 and 18. During the August 17 session, the Union's business representative, Mylor Treneer, stated that the unit employees were "quite disappointed" with the Respondent's initial wage proposal. The Respondent's attorney, David S. Shankman, responded that Treneer was "delusional" and fraudulently misleading the employees and that agreeing to the Union's wage proposal would be "suicide" for the Respondent. Shankman made a number of specific claims to support the Respondent's position, including that the Respondent pays 50-percent commissions to Seattle-area hotel and convention center properties, that its contracts with those properties are nonexclusive and precarious, and that the Seattle market would not support event rates that would cover the Union's wage proposal. Shankman stated that the Union's wage proposal would cause the Respondent to lose contracts and go "underwater." Treneer replied that the Union had relied, in part, on the contractual wage rates in the Respondent's contracts with IATSE locals in San Diego and San Francisco to develop its wage proposal.[8] Shankman responded that those contracts are not comparable because they cover sporadic, as-needed labor that the Respondent procures from union hiring halls to supplement its work force on specific billable events, but do not cover the Respondent's in-house technicians, who receive regular hours and are compensated for both billable and nonbillable work. Treneer told the Respondent to expect an information request.

During the August 18 session, the Union modified its economic proposals to limit the circumstances in which the Respondent would have to pay overtime and to reduce its proposed wage rates by $2 per hour for each job classification, which still would have increased unit employees' current wage rates by 64 to 106 percent depending on the job classification. The Union also adhered to its "just cause" discipline proposal but modified it to include a list of infractions for which the Respondent would have just cause to immediately terminate an employee. The parties reached tentative agreements on provisions concerning shop stewards, safety, the workweek, discrimination, and the Respondent's duty to supply power tools.

On September 2, the Union, through its attorney, Katie Sypher, emailed the Respondent the following information request:

> I write with respect to your remarks on PSAV's economic position at the parties' most recent bargaining session. To further the parties' negotiations, Local 15 would like to better understand PSAV's financial position.
>
> At the session, you expressed PSAV's inability to pay the wages requested by the tech bargaining unit in strong terms, stating both that Local 15's wage proposal "would put [PSAV] underwater" and "would be suicide for [the] company." You also connected the company's inability to pay the wages requested both with the commissions that it pays back to its hotel property clients and the rates it charges for its services to event clients, stating that "50% of our revenue, roughly, goes to commissions" to the hotel properties and that "the money [needed pay the wages requested] isn't there based on the market rates that can be charged" for PSAV's event services to clients.
>
> Thus, Local 15 makes the following request for information from PSAV:
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> - Documents sufficient to substantiate PSAV's claim of its inability to pay the requested wages; particularly, we request that the company provide documents that demonstrate the company's gross revenues, expenses, and profits for 2015 and 2016 to date [(bullet point 1)];
> - PSAV's current contracts with any and all of its hotel clients in Seattle, SeaTac, Bellevue, Tukwila, and Tacoma [(bullet point 2)];
> - If the contracts requested in above don't expressly establish the commission rates and sums PSAV has paid to such property owners between January 1, 2015 and the present, documents that demonstrate that information [(bullet point 3)]; and,
> - Documents sufficient to show the rates charged to all event clients to whom

[7] The Respondent's proposed grievance and arbitration provision did not cover acts occurring before the effective date of the contract, separation of employees during their first 60 days of employment, discipline that does not involve the loss of time or pay, employee grievances that do not involve personal relief to the grievant, allegations of discrimination, and unfair labor practice charges.

[8] Under the San Diego contract, the Respondent pays technicians from $26.89 to $39.21 per hour. Under the San Francisco contract, the Respondent pays technicians from $32.88 to $93.58 per hour.

> PSAV has provided service in the cities listed above within the past year (September 1, 2015 to present) [(bullet point 4)].
>
> If these documents can be provided electronically, I think that will be most efficient for everyone. The Union is willing to enter into an appropriate confidentiality agreement to cover the requested documents. Finally, if the last bullet of the Local's request proves unduly cumbersome, we are open to negotiating some representative sample of the documents requested above that will meet the Local's demand.

On September 6, the Respondent, through Shankman, sent the following response to the Union (the September 6 response):

> Thanks for your email. However, it grossly misstates the context in which the statements were made. What I was explaining during our negotiations is that no employer in this business would pay such a wage to its hourly workforce that was so grossly outside of its business model and if it did so, it would be suicide for the company. This is not an inability to pay for lack of revenue. It's a refusal to pay an hourly rate that would be detrimental to the business. This is no different than *Burruss Transfer*, 307 NLRB 226, where the Board denied the employer claimed inability to pay when the employer asserted during negotiations that a requested wage increase was unacceptable because it would "not be able to survive." See also, e.g., *AMF Trucking & Warehousing*, 342 NLRB 1125, 1126 ("'[i]nability to pay' means that the company presently has insufficient assets to pay or that it would have insufficient assets to pay during the life of the contract that is being negotiated. Thus, inability to pay is inextricably linked to nonsurvival in business"). No such claim of inability to pay was ever made.
>
> The balance of your request (hotel contracts, commission rates and rates charged to end clients) is premised off of your inability to pay claim which we clearly did not assert. Indeed, and to keep this in perspective (either for purposes of your request or the negotiations going forward), we shared with you the issue of commissions not to explain hardship or the ability to pay wages. Rather, we shared this in the context of explaining why we can pay higher union-call rates for *billable* events vs. the rates being paid to PSAV's regular hourly employees for many hours which are not-billable. There was no connection between these circumstances other than that. Finally, to the extent this request would be made but not tied to the above-issues, we decline to provide this information as it is proprietary and confidential business information.
>
> Please contact me if you want to discuss this further or we can address it on the 19th.

The Union never discussed the September 6 response with the Respondent.

On September 12, the Respondent emailed the Union a second complete contract proposal that included its initial proposals for wages, benefits, discipline, and grievance and arbitration. However, the Respondent modified its proposed management-rights clause to state that it would only "subcontract work where it is deemed necessary for business operations or when [it] determines that a specific skill set or work load requires the use of part-time as needed employees." By reply email dated September 13, the Union made a partial contract counterproposal that did not modify its wages, benefits, discipline, grievance and arbitration, or subcontracting provisions. On September 19, the parties held another bargaining session and discussed their latest proposals. They reached tentative agreements on provisions concerning implementation of work rules, a labor-management committee, excused absences, direct deposit, and scheduling.

On October 11, the Union filed its charge alleging that the Respondent unlawfully failed and refused to provide the information that the Union requested on September 2.

Two days later, the Respondent sent a letter to Treneer and the entire bargaining unit (the October 13 letter). The October 13 letter explained the Respondent's wage proposal and the difference between sporadic, as-needed labor and regular in-house employees. The letter further stated, "We heard your proposal for a nearly 100% pay increase for some positions. We just don't agree with it, and we don't accept it." The letter also criticized the Union's proposal to financially penalize the Respondent for any unforeseen scheduling changes necessitated by client needs. The letter closed by stating that the Union's proposals suggested that the Union either did not understand the Respondent's explanations or failed to recognize that the bargaining unit here differs from the type of unit that the Union normally represents.

On November 5, the Respondent cancelled the bargaining session scheduled for November 15, but it presented a new complete contract proposal to the Union and invited the Union to send new proposals. The Respondent did not modify its proposals for wages, benefits, discipline, or

grievance and arbitration. However, the Respondent included a separate subcontracting provision.[9]

In early December, the Union cancelled the bargaining session scheduled for December 12, but presented a modified union security proposal.

On January 24, 2017, the Union emailed the Respondent another partial contract proposal, which modified versions of the Respondent's most recently proposed discipline and grievance and arbitration provisions.[10] The Union also modified its most recent subcontracting provision to allow for patterns of disputes over subcontracting (rather than individual disputes) to be submitted to the grievance process. In its email, the Union also stated, "We look forward to the parties' return to the table and hope that the time away brings a renewed sense of purpose to the parties' talks and an eye toward real progress." The parties discussed the Union's partial proposal at the January 26, 2017 bargaining session and reached tentative agreements on probationary period and scheduling provisions.

On January 27, 2017, the Union filed a charge alleging that the Respondent was bargaining in bad faith.

On February 22, 2017, the Respondent emailed the Union a new complete contract counterproposal that did not modify the wage or benefits provisions. However, except for the "final and binding" language, the Respondent accepted the Union's January 24 modifications to the grievance and arbitration provision. Further, the Respondent modified its discipline provision to allow it to skip progressive discipline only for repeat offenses or "particularly egregious" conduct. Additionally, the Respondent modified its subcontracting provision to allow for patterns of disputes over subcontracting to be submitted to the grievance process, as the Union had proposed.

On February 24, 2017, the Union cancelled the March 1, 2017 bargaining session. The Union did not respond to the Respondent's repeated requests to reschedule.

Analysis

A. Alleged Failure to Provide Relevant Requested Information

For the reasons that follow, we agree with the judge that during the August 17 bargaining session, the Respondent, through its attorney, Shankman, made a claim of inability to pay the Union's initial wage proposal, but we also agree with the Respondent that it effectively retracted that claim. Therefore, we find that the Respondent did not violate the Act by failing to provide the Union with the general financial information requested in bullet point 1 of the September 2 information request. However, we find that the Respondent unlawfully failed to provide the Union with the specific financial information requested in bullet points 2–4 because that information is relevant to the Union's ability to assess claims made by the Respondent during bargaining and to formulate wage counterproposals.

An employer must provide general financial information to a union when the employer has claimed an inability to pay but not when it has merely expressed unwillingness to pay. See *Nielsen Lithographing Co.*, 305 NLRB 697, 699–701 (1991), enfd. sub nom. *Graphic Communication Workers Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992). The Board has explained that "inability to pay is inextricably linked to nonsurvival in business." *AMF Trucking & Warehousing*, 342 NLRB 1125, 1126 (2004) ("'Inability to pay' means that the company presently has insufficient assets to pay or that it would have insufficient assets to pay during the life of the contract that is being negotiated."). Shankman's statements during the August 17 bargaining session, particularly his statements that accepting the Union's initial wage proposal would be "suicide" for the Respondent and would cause it to go "underwater," indicated that the Respondent's business would not survive if the Respondent accepted the Union's wage proposal and that it therefore could not, rather than would not, pay the Union's proposed wage rates. See, e.g., *Shell Co.*, 313 NLRB 133, 133 (1993) (finding that the employer claimed inability to pay where it stated that "the situation . . . was 'critical' and a matter of 'survival'"). Therefore, we agree with the judge that the Respondent claimed inability to pay during the August 17 bargaining session.

However, an employer can retract a claim of inability to pay by clearly informing the union that it is not making such a claim. See *Richmond Times-Dispatch*, 345 NLRB 195, 198 (2005); *American Polystyrene Corp.*, 341 NLRB 508, 509–510 (2004), revd. sub nom. *Chemical Workers v. NLRB*, 467 F.3d 742 (9th Cir. 2006); see also *Lakeland Bus Lines v. NLRB*, 347 F.3d 955, 963–964 (D.C. Cir. 2003). For example, in *American Polystyrene*, supra, when the union asked if the employer could afford its proposals, the employer's general manager responded, "'No,

[9] The subcontracting provision stated that the Respondent would only subcontract unit work "in those situations where PSAV, in its sole discretion, determines that bargaining unit employees lack the necessary skills to perform the work, PSAV does not own or have access to the equipment needed to perform the work, or when the bargaining unit employees are not available to perform the work."

[10] With regard to the discipline provision, the Union replaced "reasonable suspicion" with "just cause" and specified that more serious infractions may warrant immediate suspension or termination under the progressive discipline system. With regard to the grievance and arbitration provision, the Union modified the provision to include "final and binding" language and to no longer exclude discipline that does not involve the loss of time or pay, employee grievances that do not involve personal relief to the grievant, allegations of discrimination, and unfair labor practice charges.

I can't. I'd go broke.'" Id. at 508. The Board found that the employer's general manager effectively retracted any claim of inability to pay, however, by stating in response to the Union's written information request, "'While I have told you that we are a small company and times are tough, at no time have I ever told you we cannot afford your proposals. Rather, in these uncertain economic times, we believe that we need to take a more cautious approach than what you propose.'" Id. at 508–510.

Similarly, in response to the Union's September 2 information request, the Respondent stated that it was not claiming "an inability to pay for lack of revenue" but instead was refusing "to pay an hourly rate that would be detrimental to the business." The Respondent's September 9 response clearly indicated that the Respondent was not unable to pay the Union's proposed wage rates but, instead, was unwilling to pay those rates. Additionally, the Respondent did not undermine its September 9 response by subsequently making statements that suggested its business could not survive if it accepted the Union's wage proposal. Cf. *Wayron, LLC*, 364 NLRB No. 60, slip op. at 5 fn. 17 (2016).[11] Instead, the Respondent repeatedly stated that the Union's wage proposals were contrary to its business model and that it was neither willing nor required to deviate from that model. The Respondent never again suggested that it could not, rather than would not, pay the Union's proposed wage rates.[12] Accordingly, we find that the Respondent effectively retracted its claim of inability to pay and therefore did not unlawfully fail to provide the Union with the general financial information requested in bullet point 1.

However, the Respondent's effective retraction of its inability-to-pay claim did not necessarily justify its refusal to provide the Union with the specific financial information requested in bullet points 2–4. See *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 2 (2018) ("Although an employer need not 'open its books' to a union in the absence of a claimed inability to pay, a union may still seek specific financial data, and the employer must provide such information upon a showing of relevancy."). An employer's duty to provide requested information that is necessary to a union's performance of its representational duties includes the duty to provide information needed by the union "to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159 (2006); see also *Management & Training*, supra, slip op. at 2; *National Extrusion & Mfg. Co.*, 357 NLRB 127, 128–129 (2011), enfd. sub nom. *KLB Industries, Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012). The union will often need such information not only to assess the accuracy of the employer's claims but also to develop counterproposals. See *Kitsap Tenant Support Services*, 366 NLRB No. 98, slip op. at 7 (2018).

Here, the Union demonstrated that the information requested in bullet points 2–4 is relevant to assessing claims made by the Respondent at the bargaining table. During the August 17 bargaining session, the Respondent made a number of specific claims to support its rejection of the Union's wage proposal, including that the Respondent pays 50-percent commissions to Seattle area hotel and convention center properties, that its contracts with those properties are nonexclusive and precarious, and that the Seattle market would not support event rates that would cover the Union's wage proposal. The Union specifically mentioned some of those claims in its September 2 information request. Thus, unlike bullet point 1, bullet points 2–4 sought information that would help the Union assess the Respondent's specific assertions during bargaining. See *Caldwell*, supra at 1160. Moreover, the information requested in bullet points 2–4 will help the Union better understand the Respondent's business model and allow it to develop wage counterproposals accordingly.

Thus, we find that the specific financial information requested by the Union in bullet points 2–4 is relevant to the Union's representational duties, and that the Respondent therefore violated Section 8(a)(5) and (1) by failing and refusing to provide that information to the Union.

[11] Chairman Ring and Member Emanuel did not participate in *Wayron*, supra, and they express no view as to whether it was correctly decided.

[12] Therefore, we find that the present case is distinguishable from *Chemical Workers v. NLRB*, 467 F.3d 742 (9th Cir. 2006), which reversed the Board's finding that the employer in that case effectively retracted a claim of inability to pay. Cf. id. at 754 (finding that because "the Company continued to say that the Company faced 'uncertain economic times,' that 'times [were] tough,' and that decreased sales were forcing the [C]ompany to institute a layoff," it did not effectively retract its inability-to-pay claim but instead "maintained that position throughout the bargaining process").

In addition, we do not agree with the judge that the Respondent's retraction was disingenuous or in bad faith. In particular, we disagree with his finding that the Respondent played a "semantical game" after retracting its inability-to-pay claim. To the contrary, as discussed above, the Respondent did not continue to make statements or engage in conduct that suggested it could not pay the Union's wage proposals. Further, the Respondent's statements that the Union's wage proposals were contrary to its business model in the Seattle area were not disingenuous. The Union based its wage proposals, at least in part, on wage rates that the Respondent pays to sporadic, as-needed employees for work on specific billable events. The unit employees, in contrast, are paid a regular hourly wage regardless of whether they are performing billable or nonbillable work.

B. Alleged Failure to Bargain in Good Faith

For the reasons that follow, we reverse the judge's finding that the Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1).

Section 8(d) of the Act defines the duty to bargain collectively as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession." When determining whether an employer has violated its statutory duty to bargain in good faith, the Board examines the totality of the employer's conduct, both at and away from the bargaining table. See *Regency Service Carts*, 345 NLRB 671, 671 (2005). The Board must ultimately determine "'whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.'" *Kitsap*, supra, slip op. at 8 (quoting *Public Service Co. of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001), enfd. 318 F.3d 1173 (10th Cir. 2003)). While the Board will not decide whether an employer's proposals were acceptable or unacceptable, it will examine those proposals and "consider whether, on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract." *Reichold Chemicals*, 288 NLRB 69, 69 (1988), enfd. in relevant part sub nom. *Teamsters Local 515 v. NLRB*, 906 F.2d 719 (D.C. Cir. 1990), cert. denied 498 U.S. 1053 (1991); see also *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984) ("A party is entitled to stand firm on a position if he reasonably believes that it is fair and proper or that he has sufficient bargaining strength to force the other party to agree."). The Board will not find that an employer failed to bargain in good faith if the union failed to test the employer's willingness to bargain. See *Captain's Table*, 289 NLRB 22, 22–24 (1988).

Initially, we find that certain portions of the judge's bad-faith bargaining analysis are unsound. The judge began his analysis by finding that the Respondent's delay in providing meaningful bargaining proposals is evidence of bad faith. He correctly pointed out that, as discussed above, the Board previously found that the Respondent unlawfully refused to bargain with the Union from January 4 to May 23. However, he failed to consider that during this time, the Respondent's request for review of the underlying representation case was pending with the Board,[13] nor did he acknowledge that after the Board denied the Respondent's request for review, the Respondent immediately reached out to the Union to schedule bargaining and has been willing to bargain with the Union at all times since then, even after the Union cancelled the March 1 bargaining session and failed to respond to the Respondent's repeated attempts to reschedule it. Further, the judge incorrectly found that the Respondent engaged in "dilatory tactics" in presenting its counterproposals for wages and benefits. As set forth above, less than a month after the Union presented its first complete contract proposal and prior to the parties' next bargaining session, the Respondent presented its first complete contract counterproposal, which included wage and benefits provisions. Additionally, throughout the rest of bargaining, the Respondent timely responded with counterproposals after receiving new proposals from the Union. The Respondent did not make any concessions regarding wages or benefits, but Section 8(d) of the Act states that parties are not required to make concessions. Thus, we find that the Respondent did not engage in any dilatory bargaining tactics.

We also reject the judge's finding, and our dissenting colleague's contention, that the Respondent's wage and benefits proposals themselves are evidence of bad faith. The Respondent proposed essentially the status quo for wages and benefits, and it maintained that position throughout bargaining. However, the Respondent never suggested that it would not consider any other proposals for wages and benefits or that its initial proposals for wages and benefits were "take it or leave it." Instead, the Respondent indicated throughout bargaining that it was unwilling to accept the Union's proposals for very substantial wage increases because it believed that those proposals were contrary to its Seattle-area business model. That the Respondent did not modify its wage proposal in response to the Union reducing its proposal by $2 per hour does not evidence bad faith. The Union was still proposing an increase in unit employees' current wage rates by 64 to 106 percent, and the Respondent believed that this proposal showed that the Union was continuing to refuse to recognize the difference between the Respondent's business model in Seattle and its use of referrals from union hiring halls on a sporadic, as-needed basis to supplement its work force on specific billable events in other jurisdictions. The Respondent held firm to its initial wage proposal throughout bargaining, and the Union continued to insist on substantial wage increases even after adjusting its wage proposal. Thus, both parties engaged in hard bargaining over wages, and neither party was required to give

[13] The root of the problem is that under the Board's Rules, a certification of representative may issue before the Board has ruled on a pending request for review. Chairman Ring and Member Emanuel are willing to reconsider the appropriateness of permitting regional directors to issue a certification of representative prior to the Board's final determination on a request for review.

up its position or make concessions. See *Commercial Candy Vending Division*, 294 NLRB 908, 909 (1989) (finding no evidence of bad faith where "the [u]nion remained as firm in its basic position regarding wages as did the [employer]").[14]

The judge found that the Respondent's proposals regarding certain noneconomic subjects of bargaining also evidence bad faith. Again, we disagree. First, the judge incorrectly found that the Respondent's proposed discipline provision would have maintained the status quo. The Respondent did not propose maintaining the status quo of "at-will" employment; instead, it proposed that it must have a "reasonable belief" that an employee committed an infraction to discipline that employee. Cf. ibid. (finding evidence of bad faith where the employer's "final contract proposal provided for 'at will' employment, with no limits on the [employer's] right to discharge unit employees (other than those limits imposed by law)").[15] Next, the judge found that the Respondent's proposed grievance and arbitration provision is evidence of bad faith, in part because it did not incorporate the Union's proposal for "final and binding" arbitration. However, the Respondent's proposal allows a party to seek enforcement of an arbitrator's decision against a defaulting party in court, and it does not suggest that the defaulting party would be able to relitigate the merits of the grievance in court.[16] Finally, the judge found that the Respondent's proposed management-rights clause is evidence of bad faith because it would allow the Respondent to retain "sole discretion" over important terms and conditions of employment like discipline and subcontracting. However, a proposal for a broad management-rights clause is not necessarily unlawful or evidence of bad faith. See *St. George Warehouse, Inc.*, 341 NLRB 904, 907 (2004), enfd. 420 F.3d 294 (3d Cir. 2005); *Coastal Electric Cooperative*, 311 NLRB 1126, 1127 (1993). In any event, the judge failed to acknowledge that the proposed management-rights clause granted the Respondent "sole discretion" *except* as restricted by other provisions in its proposed contract. See *Coastal Electric*, supra at 1127 (finding that the employer's proposal for a broad management-rights clause was not evidence of bad faith, particularly in light of language stating that its "authority was limited by whatever the parties agreed to elsewhere in their contract"). As discussed above, the Respondent proposed a "reasonable belief" restriction on its discretion over discipline. Additionally, the Respondent displayed willingness to bargain over its discretion to subcontract, as, prior to the Union

[14] Contrary to our dissenting colleague, the Respondent did not insist "on reserving to itself unbridled discretion to unilaterally determine wage rates for new hires and set any wage increases." It proposed that it would set wage rates for all new hires within defined wage ranges for each job classification; thus, its discretion to set wage rates for new hires would have been limited under its proposal. Further, we note that the Union's initial proposal did not provide for wage increases during the term of the contract, and that its subsequent proposals did not address wage increases during the term of the contract. Therefore, the Respondent simply made an opening offer to retain discretion over wage increases during the term of the contract, and the Union never countered it. We also note that the Respondent did not propose to reserve the right to decrease the employees' wage rates below their current levels. Cf. *Kitsap*, supra, slip op. at 9 (finding evidence of bad faith where the employer sought to reserve the right to reduce employees' wage rates during the term of the contract).

Although you would not suspect it from our dissenting colleague's opinion, we have acknowledged, and we again acknowledge here, that the Respondent's unlawful failure to provide the Union with the information in bullet points 2–4 of the September 2 information request may have contributed to the essential stalemate in bargaining over wages. However, the Union based its entire September 2 request, including bullet points 2–4, on the Respondent's inability-to-pay claim, stating that the Respondent had "connected the company's inability to pay the wages requested both with the commissions that it pays back to its hotel property clients and the rates it charges for its services to event clients." The Respondent noted as much, stating in its September 6 response that "[t]he balance of your request (hotel contracts, commission rates and rates charged to end clients) is premised off of your inability to pay claim . . . ." The Respondent retracted its inability-to-pay claim, and the Union did not thereafter attempt to clarify the basis of its request for bullet points 2–4 (Union Business Representative Treneer testified that he never discussed the September 6 response with the Respondent). On these facts, we find that the Respondent's refusal to provide the information requested in bullet points 2–4 was not an intentional ploy to disrupt the parties' negotiations or to thwart the possibility of reaching agreement on wages. Indeed, the Respondent may have believed, mistakenly but in good faith, that having retracted its inability-to-pay claim, it had no duty to furnish any of the requested information. Moreover, as noted above, the Union based its wage proposals in part on wage rates the Respondent pays in other locales to employees hired sporadically to perform billable work, and none of the information requested in bullet points 2–4 was necessary for the Union to grasp the fundamental difference between those employees and the employees at issue here, who are paid a regular hourly wage whether they are performing billable work or not. In sum, under the circumstances presented here, we find that the Respondent's unlawful failure to furnish certain requested information does not warrant a finding of bad-faith bargaining.

[15] Our dissenting colleague minimizes the "reasonable belief" proposal "given that 'reasonable belief' is not defined and no evidentiary standard is imposed." However, union representative Treneer admitted that the Union never asked the Respondent what it meant by "reasonable belief." Thus, the Union never asked the Respondent to define "reasonable belief," and the Respondent never expressed unwillingness to do so. Moreover, we simply disagree with our dissenting colleague's contention that the "plain meaning" of the Respondent's "reasonable belief" proposal is "that the Respondent would retain effectively unreviewable discretion to impose discipline whenever it believed there were grounds for doing so." As discussed above, the Respondent did not propose "at-will" employment, which is universally understood to place no limits on an employer's right to discipline or discharge its employees, except those limits imposed by law. Thus, by proposing to move from "at-will" employment prior to the Union's certification to the "reasonable belief" standard, the Respondent plainly indicated that it was willing to limit its discretion over discipline and discharge.

[16] Treneer testified that he never asked the Respondent for clarification on the meaning and application of this language because it was a "low priority" for the Union.

filing its bad-faith bargaining charge, the Respondent twice proposed language that narrowed its discretion over subcontracting.[17]

In addition to the reasons discussed above, we find that the Union did not sufficiently test the Respondent's willingness to bargain prior to filing its bad-faith bargaining charge. Over the course of approximately 8 months of bargaining, the parties had only five bargaining sessions, the first of which was primarily devoted to establishing ground rules. Nevertheless, they still reached tentative agreements on a number of contract provisions.[18] Additionally, the parties agreed in principle on the inclusion of a union-security and dues-checkoff provision, although they had not agreed on that provision's specific language by the time the Union walked away from bargaining. The Respondent also made concessions regarding meals and breaks. While the Respondent held firm to its initial proposals for wages, benefits, discipline, and grievance and arbitration, it did not display a general unwillingness to bargain over those subjects, and it did not suggest that its initial proposals for those subjects were "take it or leave it."

Moreover, the parties did not hold any bargaining sessions from September 19, 2016 to January 26, 2017. Neither party was solely at fault for this 4-month hiatus in bargaining, as the Respondent cancelled the bargaining session scheduled for November 15, while the Union cancelled the bargaining session scheduled for December 12.[19] Prior to the parties resuming bargaining on January 26, 2017, the Union emailed a new partial contract proposal to the Respondent on January 24, 2017, and stated, "We look forward to the parties' return to the table and hope that the time away brings a renewed sense of purpose to the parties' talks and an eye toward real progress." But those optimistic words proved deceptive: the Union filed its bad-faith bargaining charge only 1 day after the January 26 bargaining session; it subsequently cancelled the parties' next bargaining session, which was scheduled for March 1, 2017; and it failed to respond to the Respondent's repeated attempts to reschedule that session. The record does not suggest that the Respondent engaged in any conduct or made any statements at the January 26 session that indicated further bargaining would be futile. To the contrary, during that session the parties discussed the Union's new proposal and tentatively agreed on provisions concerning a probationary period and scheduling. Further, the Respondent did not have an opportunity to respond to the Union's final contract proposal with a counterproposal before the Union filed its bad-faith bargaining charge.[20] Overall, we simply cannot find on these facts that the Union had sufficiently tested the Respondent's willingness to bargain at the time that it filed its bad-faith bargaining charge and ended bargaining.

The judge also relied on certain conduct by the Respondent away from the bargaining table to support his finding of bad-faith bargaining. The Board is "reluctant to find bad-faith bargaining exclusively on the basis of a party's misconduct away from the bargaining table." *Litton Systems*, 300 NLRB 324, 330 (1990), enfd. 949 F.2d 249 (8th Cir. 1991), cert. denied 503 U.S. 985 (1992). Moreover, the limited extent to which the Respondent may have engaged in misconduct away from the bargaining table was not nearly significant enough to support a finding of bad faith, particularly where, as discussed above, the Union failed to test the Respondent's willingness to reach an agreement at the bargaining table.

[17] Our dissenting colleague argues that the Respondent's proposals "would have given it unfettered discretion and control" over wages, benefits, and discipline. Although we acknowledge that the Respondent's benefits proposal would have provided it with complete control over benefits, we find, for the reasons discussed above, that the Respondent's wage and discipline proposals would not have provided it with "unfettered discretion and control." Further, unlike the employers in the cases on which our dissenting colleague primarily relies, the Respondent did not seek to retain such expansive and unfettered control that it would have required the Union "to cede substantially all of its representational function," *Kitsap*, supra, slip op. at 9 (internal quotations omitted). See ibid. (finding bad faith where the employer sought to retain unfettered control over wages, benefits, and discipline and to exclude from the grievance procedure "the nearly exhaustive list of rights reserved to the [employer] under the management-rights clause"); *Public Service Co.*, supra, 334 NLRB at 489 (finding bad faith where "[the employer] sought discretion over hours, a major component of wage rates, and benefits, . . . as well as discharge, discipline, layoffs, subcontracting, assignment of unit work to supervisors, work and safety rules, transfers, demotions, employee qualifications, and elimination of unit work"); *A-1 King Size Sandwiches, Inc.*, 265 NLRB 850, 858–859 (1982) (finding bad faith where the employer sought to retain "total control over virtually every significant aspect of the employment relationship," including wages, discipline/discharge, layoff/recall, work/safety rules and regulations, subcontracting, and the transfer of unit work).

[18] Specifically, the parties reached tentative agreements on provisions concerning shop stewards, safety, the workweek, discrimination, the Respondent's duty to supply power tools, implementation of work rules, a labor-management committee, excused absences, direct deposit, scheduling, and a probationary period.

[19] In cancelling the November 15 bargaining session, the Respondent still emailed a new complete contract counterproposal to the Union, asked the Union to share any new proposals of its own, and offered to exchange questions and clarifications by email until the parties could reschedule the cancelled session.

[20] In fact, when the Respondent did subsequently present a complete contract counterproposal to the Union on February 22, 2017, the Respondent, as discussed in more detail above, made significant concessions regarding discipline, grievance and arbitration, and subcontracting. We cannot know for certain whether the Respondent would have made those same concessions in the absence of the Union's bad-faith bargaining charge, but that uncertainty does not change the fact that by filing its charge only 3 days after presenting its most recent contract proposal, the Union did not give the Respondent a realistic opportunity to consider the Union's new proposal and develop a counterproposal.

In assessing the Respondent's conduct away from the table, the judge first found that the Respondent's October 13 letter evidences bad faith. Normally, such a letter would be a privileged communication under Section 8(c) of the Act. "The Board has long held that 'an employer has a fundamental right, protected by [Section] 8(c) of the Act, to communicate with its employees concerning its position in collective-bargaining negotiations and the course of those negotiations.'" *Mesker Door, Inc.*, 357 NLRB 591, 595 (2011) (quoting *United Technologies Corp.*, 274 NLRB 1069, 1074 (1985), enfd. sub nom. *NLRB v. Pratt & Whitney Aircraft Division*, 789 F.2d 121 (2d Cir. 1986)). However, the Board has found that an employer may not explain its proposals directly to its employees when it "has denied the [u]nion the very information it needed to evaluate those same proposals during negotiations," *Globe Business Furniture*, 290 NLRB 841, 841 fn. 2 (1988), enfd. mem. 889 F.2d 1087 (6th Cir. 1989), and the Respondent was unlawfully refusing to provide the Union with the information requested in bullet points 2–4 of the September 2 information request when it sent the October 13 letter, which extensively discussed wages. Nevertheless, even assuming that the October 13 letter was not privileged under Section 8(c), we find it weakly probative of bad faith at best. As discussed above, the Union based the entirety of its September 2 information request on the Respondent's claim of inability to pay, which the Respondent retracted, and therefore the Respondent may have believed—mistakenly, but in good faith—that it did not have to provide any of the requested information, including bullet points 2–4. Thus, the Respondent did not intentionally seek to undermine or circumvent the Union with an unprivileged communication.

The judge also relied on statements by the Respondent's CEO Mike McIlwain at a preelection mandatory meeting for technicians in the Philadelphia, Pennsylvania area.[21] McIlwain stated that negotiations in Seattle (the negotiations at issue in this case) were at a stalemate, that things "could very well go the same way in Philadelphia, as far as dragging out and nothing happening," and that the Respondent would have to bargain in good faith but would not have to agree to any specific terms. Contrary to the judge, we do not find that McIlwain's statements evidence bad faith. McIlwain accurately stated the Respondent's duty to bargain under the Act, and he did not mischaracterize the status of negotiations in Seattle at that time, as the parties had gone nearly 4 months without a bargaining session.[22]

After considering the totality of the Respondent's conduct, both at and away from the bargaining table, we find that the General Counsel did not establish that the Respondent failed to bargain in good faith in violation of Section 8(a)(5) and (1).

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for paragraph 4 of the judge's Conclusions of Law.

"4. By failing and refusing to furnish the Union with the information that it requested in bullet points 2–4 of its September 2, 2016 information request, the Respondent violated Section 8(a)(5) and (1) of the Act."

2. Delete paragraph 5 and renumber the subsequent paragraphs of the judge's Conclusions of Law accordingly.

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with the information that it requested in bullet points 2–4 of its September 2, 2016 information request, we shall order the Respondent to provide that information to the Union.[23]

[21] While the Respondent and the Union were engaged in bargaining in January of 2017, another union, IATSE Local 8, was engaged in an organizing campaign for a unit of the Respondent's technicians in the Philadelphia area.

[22] Our dissenting colleague relies significantly on McIlwain's statements in finding bad faith and claims that they "indicate[] that [the Respondent] was determined not to reach agreement with any union at any location, including Seattle." We disagree. For starters, McIlwain did not indicate that *the Respondent* sought to drag out bargaining. He noted that the Seattle negotiations were "dragging out," and the dissent fails to acknowledge the Union's share of responsibility for the slow pace of those negotiations. The dissent also fails to give any weight to the fact that at the time McIlwain made those statements, the parties had experienced a 4-month hiatus in bargaining that was not solely attributable to either party. In fact, as discussed above, when the Respondent was forced to cancel a bargaining session, it tried to reduce the negative impact on bargaining by presenting a new counterproposal by email and offering to continue negotiating by email until the parties could reschedule the cancelled session. These are not the acts of a party that "was determined not to reach agreement." Thus, we will not ascribe a sinister motive to the Respondent based on McIlwain's statements, which accurately described the status of the parties' negotiations at the time.

Further, McIlwain's statements were not remotely comparable to the statements made by the employer in *Overnite Transportation Co.*, 296 NLRB 669 (1989), cited by the dissent, which the Board found "reflected an attitude contrary to good-faith bargaining." See id. at 671 ("[The employer's vice president] threatened the employees with plant closure and loss of jobs if they selected the [u]nion, equated unionization with dire consequences, stated that the [employer] would not sign a contract, and threatened to bargain in bad faith to force a strike.").

[23] Because we find that the Respondent only violated the Act by failing to provide relevant requested information to the Union, the violations clearly are not numerous or egregious enough to justify the notice-reading remedy recommended by the judge.

ORDER

The National Labor Relations Board orders that the Respondent, Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Alliance of Theatrical Stage Employees, Local 15 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

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

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

(a) Furnish to the Union in a timely manner the information requested by the Union in bullet points 2–4 of its September 2, 2016 information request.

(b) Within 14 days after service by the Region, post at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

Dated, Washington, D.C. March 12, 2019

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John F. Ring, Chairman

_____

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting in part.

Contrary to the majority, the record demonstrates (as the judge found) that the Respondent engaged in bad-faith bargaining.[1] The Respondent's conduct, both at and away from the bargaining table, reveals its desire to avoid reaching a collective-bargaining agreement in Seattle (the setting here), a tactic that also served its goal of avoiding unionization at its facilities in Philadelphia, where the Respondent's top executive invoked the difficult Seattle negotiations, and made telling statements regarding the Respondent's bargaining intentions, to dissuade the Philadelphia employees from supporting a union during an organizing campaign there. The Respondent's key bargaining proposals—reserving authority for itself on wages, on benefits, and on discipline—would have left employees with less protection against unilateral employer action than having no collective-bargaining agreement at all (the opposite of what the National Labor Relations Act envisions). Finally, as we all agree, the Respondent unlawfully failed to provide the Union with information it needed for meaningful bargaining. Not all of the administrative law judge's cited evidence supported his finding of bad-faith bargaining,[2] but there was more than enough here to find a violation of the Act.

Further, we shall not order the Respondent to post notices at its Philadelphia, Pennsylvania facilities because the General Counsel did not allege, and we do not find, that the Respondent committed unfair labor practices against any employees outside of the Seattle, Washington area.

[24] 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."

[1] I join the majority in concluding that while the Respondent was not required to open its financial books to the Union (it retracted its claim of any inability to pay the Union's bargaining demands), the Respondent did violate Sec. 8(a)(5) of the Act by refusing to provide the Union with other relevant information.

[2] I do not rely on what the judge called the Respondent's "dilatory tactics" in presenting its counterproposals or the initial delay in bargaining while the Respondent's request for review of the underlying representation case was pending before the Board; the Respondent's grievance/arbitration proposals; the claim that the Union miscalculated the

I.

A brief review of the facts is helpful here, focusing on the Respondent's bargaining proposals, its Philadelphia statements, and its unlawful refusal to provide the Union with requested information.

The Union was certified as the exclusive bargaining representative of the Respondent's Seattle, Washington technicians on December 18, 2015. However, the Respondent refused to bargain until May 23, 2016, after the Board denied its request for review of the certification. The parties began to bargain in late June, and the Union sent its first full contract proposal to the Respondent on July 19. On August 11, the Respondent responded with its first counterproposal. Critically, the Respondent proposed to maintain the existing wage rates for current employees, have the sole discretion to set wage rates for future hires within specified ranges for each job classification, determine future wage increases during the life of the contract, pay overtime as required by Federal and State law, and provide unit employees with the same benefits as it, at its sole discretion, chose to give to unrepresented employees. The Respondent also proposed a discipline provision that required a "reasonable belief" before discipline was imposed, but did not require it to use progressive discipline in any given case. The Respondent did not offer any definition of what would constitute a "reasonable belief" or provide for a method of investigating alleged wrongdoing, leaving disciplinary matters effectively to its own discretion.

Even though the Respondent refused to alter its wage, discipline, and benefits positions, the Union modified its own discipline provision during the August 18 session to include a list of infractions that would constitute automatic just cause for termination and decreased its wage proposal by $2 across the board. Tellingly, when the Respondent emailed its second set of complete proposals to the Union on September 12, it still made no modifications to its initial proposals concerning wages, benefits, and discipline.[3] Nor did it modify these proposals when it sent another contract proposal to the Union on November 5. Instead, despite movement on other provisions, it continued to insist on virtually exclusive control over those terms and conditions of employment into the parties' exchange of proposals during January 2017.

The Respondent also denied the Union access to information that would help it fully analyze and respond to the Respondent's unchanging wage proposal. During the parties' negotiating sessions on August 17 and 18, the Union expressed disappointment with the Respondent's initial proposals. In response, the Respondent's attorney (David Shankman) claimed the Union's business representative was delusional. Shankman also claimed that the Respondent paid 50 percent commissions to Seattle hotels and convention centers under precarious contracts, and that the market would not support the Union's wage proposal. The Respondent indicated that the Union's use of contractual wage rates in the Respondent's contracts with local unions in San Diego and San Francisco were inapplicable as they only covered as-needed labor, not in-house technicians such as the Seattle unit employees. The Union made an information request on September 2, based on Shankman's comments regarding the Respondent's reasons for its wage proposal. These included requests concerning the Respondent's current hotel contracts in the Seattle and surrounding area; commission rates and sums that the Respondent paid to those property owners from 2015 to the present; and documents to show the rates charged to all event clients. In its reply email of September 6, the Respondent refused to provide the requested information.

The events described above did not take place in a vacuum. While the Union in Seattle was attempting to negotiate a contract for area technicians in the face of the Respondent's unchanging proposals and refusals to provide information, the Respondent faced another organizing campaign concerning the technicians at its Philadelphia facility. As both the Seattle negotiations and the Philadelphia campaign continued, the Respondent held a mandatory meeting for Philadelphia technicians on January 26, 2017. During that meeting, Mike McIlwain, the Respondent's CEO, described the negotiations with the Union in Seattle, indicating the parties were at a stalemate and not making progress. CEO McIlwain also told the Philadelphia technicians that negotiations "could very well go the same way in Philadelphia, as far as dragging out and nothing happening," and that the Respondent would have to bargain in good faith but would not have to agree to any specific terms. The Seattle negotiations therefore became leverage in Philadelphia, revealing the Respondent's view

basis for its wage proposals; the Respondent's proposed broad management-rights clause; or the Respondent's other noneconomic proposals. Nor do I rely on the Respondent's October 13 letter to the bargaining unit.

With respect to the delay in bargaining while the request for review was pending, however, I reject my colleagues' assertion that the "root of the problem is that under the Board's Rules, a certification of representative may issue before the Board has ruled on a pending request for review."

[3] The Respondent did modify part of its subcontracting provision, and, in subsequent bargaining on September 19, the parties reached agreement on certain noneconomic provisions such as scheduling, direct deposit, and a labor-management committee.

of bargaining and simultaneously attempting to deter the Philadelphia employees from choosing a union.

The Union filed a charge alleging the Respondent was bargaining in bad faith on January 27. For the reasons set forth below, I would find that the Respondent violated the Act as alleged.

II.

Section 8(d) of the Act defines the duty to bargain collectively as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession." While neither the Board nor the courts may compel concessions, "[e]nforcement of the obligation to bargain collectively is crucial to the statutory scheme." *NLRB v. American National Insurance Co.*, 343 U.S. 395, 402, 403–404 (1952).

Good-faith bargaining under the Act "presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract." *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 485 (1960). In determining whether a party has violated its statutory duty to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. See, e.g., *Public Service Co. of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001), enfd. 318 F.3d 1173 (10th Cir. 2003); *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989), enfd. 938 F.2d 815 (7th Cir. 1991). The Board does not evaluate whether particular proposals are acceptable or unacceptable, but the Board will examine proposals to assess whether, on the basis of objective factors, they evidence bad faith. *Reichhold Chemicals*, 288 NLRB 69 (1988), affd. in relevant part 906 F.2d 719 (D.C. Cir. 1990), cert. denied 498 U.S. 1053 (1991).

An inference of bad-faith bargaining is appropriate when the employer's proposals, taken as a whole, would leave the union, and the employees it represents, with substantially less protection than provided by statute without a contract. In such circumstances, the union is effectively stripped of any meaningful opportunity to represent its members. See *A-1 King Size Sandwiches, Inc.*, 265 NLRB 850, 859 (1982). Examples of this problem are especially evident when the employer's proposals allow it to retain virtually "unfettered discretion" over key terms and conditions of employment, such as wages, benefits, and discipline. *Kitsap Tenant Support Services*, 366 NLRB No. 98, slip op. at 9 (2018).

Bad faith is also evidenced by an employer's failures to provide a union with relevant information, as the Board noted when considering an employer's "unreasonabl[e] delay" in providing information "critical to the Union's ability to formulate proposals and engage in meaningful bargaining," including wage-related information. Id., slip op. at 8 (citing *Regency Service Carts*, 345 NLRB 671, 672–673 (2005)).

As I will explain, looking at all the circumstances of the present case in light of the Board's case law, I am persuaded that the Respondent engaged in bad-faith bargaining.

III.

The Respondent's bad faith is reflected in three clear forms. First, the conduct and statements by its CEO away from the bargaining table indicate that the Respondent sought to exploit the difficult negotiations in Seattle to its benefit in order to avoid unionization at its other facilities rather than working towards an agreement. Second, the Respondent's bargaining proposals regarding wages, benefits, and discipline would have given it virtually unfettered control over those key terms and conditions of employment, undermining the Union's ability to represent its unit members. Third, the Respondent's failure to provide the Union with information that it needed to meaningfully bargain regarding wages underscored its unwillingness to negotiate toward agreement on this key contractual component. My colleagues in the majority err by not giving proper weight to this evidence.

A.

Consider first the Respondent's use of the stalled Seattle negotiations at issue here to avoid unionization at its other facilities. On January 26, 2017, in the midst of the negotiations at the Seattle facility, the Respondent's CEO Mike McIlwain held a mandatory meeting at its Philadelphia, Pennsylvania facility, where another union was engaged in an organizing campaign for a unit of the Respondent's technicians. During the meeting, McIlwain described the difficult negotiations in Seattle and stated that the parties were not making progress, adding that things "could very well go the same way in Philadelphia, as far as dragging out and nothing happening." Although he acknowledged that the Respondent would have to bargain in good faith, McIlwain made clear that it would not have to agree to any specific terms.

These facts echo those in *Overnite Transportation Co.*, supra, 296 NLRB at 670–671, in which the Board emphasized that it "looks not only at the parties' behavior at the bargaining table, but also to their conduct away from the table as bearing on a party's good faith while engaged in bargaining." Id. at 671. In that case, the Board found bad faith when the employer not only informed the union that it did not plan to depart from existing company policies but also made a series of pre-election speeches telling

employees that the union could not force the company to do anything it did not consider reasonable or practical, and that the employees would not have a better job or wages with the union because the company would never be unionized and it would resist any union pressure. Id. at 670.[4] These comments by the employer's vice president "reflected an attitude contrary to good-faith bargaining." Id. at 671. While making clear that the employer was not required to offer the union what it wanted or advance any particular proposal, the Board found that the employer was "bent on behaving as its managers had earlier threatened" and was not approaching the bargaining process "with an aim of reaching agreement with the union." Id.

As in *Overnite*, the Respondent's CEO here informed employees that the company's negotiations in Seattle were "dragging out" with "nothing happening" and that the same might happen at the Philadelphia facility if those employees chose a union. Implicit in this description of collective bargaining negotiations was the prospect that employees could not win better terms and conditions at work through union representation. The fact that the comments were made at the Philadelphia facility does not change their implications, for the statements by the CEO still provide evidence of "an attitude contrary to good-faith bargaining" with a union, in whatever facility. Id. at 671. The CEO's express reference to the Seattle facility casts light on its true intentions in Seattle as part of an overall union-avoidance and bad-faith bargaining strategy.[5] That the Respondent would use one set of stalled negotiations as a veiled threat of the same at another facility indicates that it was determined not to reach agreement with any union at any location, including Seattle.[6]

B.

The Respondent's bad faith is further demonstrated by its conduct at the bargaining table in Seattle. Although parties are entitled to lawfully engage in hard bargaining and cannot be compelled to agree to a proposal or make a concession, they cannot act so as to "frustrate the possibility of arriving at any agreement." *Kitsap Tenant Support Services*, supra, slip op. at 8 (internal citations omitted).

Applying these principles in *Public Service Co. of Oklahoma*, supra, 334 NLRB 487, the Board found that an employer bargained in bad faith when it denied the union any role in establishing employee-benefit levels, committing only to treating unit employees as it treated non-represented employees, and demanded an expansive definition of "just cause" that would provide "virtually no limitation on disciplinary action imposed by the Respondent." Id. at 488–489. The Board was particularly troubled by the fact that the employer's proposals showed an insistence on "unilateral control to change virtually all significant terms and conditions of employment of unit employees during the life of the contract," including discretion over wages, benefits, and discipline, "clearly the most basic terms for bargaining." Id. at 489. As the Board explained, the employer's proposals "would have left the Union and the employees with substantially fewer rights and protection than they would have had without any contract at all." Id. Because the proposals would also have undermined the Union's ability to represent its unit employees, the Board concluded that the employer "could not seriously have expected meaningful collective bargaining." Id.[7] Similarly, the Board held in *Kitsap*, supra, that an employer bargained in bad faith when its proposals regarding discipline and discharge reflected a goal of 'unfettered discretion" over those "vitally important areas" and it attempted to deny the union a role in determining wages and benefits by reserving the right to reduce rates and giving the union only notice of the changes. Id., slip op. at 9.

The Respondent's key proposals on wages, benefits, and discipline plainly were designed to strip away the Union's ability to effectively represent employees concerning important terms and conditions of employment. Its wage proposal exemplified the type of proposal that tends

[4] In its speeches to employees, the employer also stated that the company would hire replacements if the union were to call a strike. Id at 670. The Board found that, in addition to providing evidence of bad faith, the employer's comments unlawfully threatened that the employees' efforts to organize would be futile. Id. at 671.

[5] Certainly, the statements in *Overnite* constituted an independent unlawful threat of futility, and there is no such allegation here. Importantly, however, the weight of those statements as evidence of bad faith in bargaining in *Overnite* was not based solely on their status as unlawful threats. The majority argues that CEO McIlwain's statements are "not remotely comparable" to those in *Overnite*, but they share the same essential feature. As in *Overnite*, the Respondent's CEO here led employees to the clear conclusion that the company would ensure that there would be significant (albeit unspecified) adverse consequences to unionization. Highlighting the example of the stalled Seattle negotiations strongly implied that unionization in Philadelphia would ultimately be futile.

[6] My colleagues assert that at the time of McIlwain's statements, the 4-month hiatus in the Seattle negotiations was attributable to both parties and that the Respondent attempted to reduce the impact of that hiatus by emailing proposals. What matters, however, is the foreseeable impact of his statements on the Philadelphia employees, and the fact that the Respondent sought to leverage the break in negotiations to its own benefit—evidence of its own view of what was happening in Seattle.

[7] The Board also noted the Respondent's proposal for a broad management-rights clause, which further emphasized its unilateral control over key terms and conditions of employment but was not in itself dispositive. Id. at 488. See also *A-1 King Size Sandwiches*, supra, 265 NLRB at 527 (bad faith when the employer sought to retain unbridled control over discipline and discharge and would not consider wage-rate modifications; union would be relegated to observer status).

to frustrate agreement, as squarely illustrated in *Public Service Co. of Oklahoma*, supra, and *Kitsap*, supra. As discussed above, in both of those cases the employer sought to retain exclusive or near-exclusive control over the most critical terms and conditions of employment, engaging in bad-faith bargaining. The same is true here. Throughout bargaining, the Respondent insisted not only on maintaining current wage rates, but also on reserving to itself unbridled discretion to unilaterally determine wage rates for new hires and set any wage increases.[8] Seeking such sweeping discretion over wages, "clearly the most basic terms for bargaining," is particularly revealing. *Public Service Co. of Oklahoma*, supra, 334 NLRB at 489.

Similarly indicative of bad faith was the Respondent's insistence, as the majority concedes, that it be entitled to align bargaining unit employees' benefits with whatever benefits the Respondent—at its discretion—would (or would not) give to nonunit employees. See id. at 488–489. The Respondent's discipline proposals reflected the same dubious desire for unfettered control as seen in *Public Service Co. of Oklahoma*, giving it complete discretion as to whether it would use progressive discipline in any given instance and incorporating only a "reasonable belief" limitation on the imposition of discipline itself. See id. (expansive just-cause definition that would provide "virtually no limitation on disciplinary action imposed" was evidence of bad faith). Contrary to the view of my colleagues, the "reasonable belief" limitation is effectively meaningless, given that "reasonable belief" is not defined and no evidentiary standard is imposed.[9]

In essence, then, the Respondent insisted on retaining exclusive control over the important issues of wages, benefits, and discipline, which the Board has found to be evidence of bad faith. Here, as in *Kitsap*, supra, "[t]hese proposals would have required the Union to cede substantially all of its representational function and would have so damaged the Union's ability to function as the employees' bargaining representative that the Respondent could not seriously have expected meaningful collective bargaining." 366 NLRB No. 98, slip op. at 10.[10] Absent any evidence that the Respondent was open to moving away from its proposed unilateral control over those key issues, and in light of evidence that the Union did revise its proposals (even if not to the Respondent's satisfaction), it is reasonable to conclude that the Respondent did not intend to meaningfully bargain toward a complete contract, despite its negotiations and tentative agreements in other areas. That the Respondent might not have made any statements of futility at the bargaining session just before the Union filed the bad-faith bargaining charge (as the majority observes) is immaterial in context. Although the parties discussed scheduling and a probationary period, the Respondent's adamant refusal to change its extreme bargaining positions on the most critical issues of wages, benefits, and discipline speaks for itself.

C.

Last, we all agree that the Respondent unlawfully failed to provide the Union with requested information—in my view yet another indicator of bad-faith bargaining. As the Board held in *Kitsap*, supra, the employer's "unreasonabl[e] delay" in providing information "critical to the Union's ability to formulate proposals and engage in meaningful bargaining," including wage-related information, further supported the bad faith finding. 366 NLRB No.

[8] My colleagues dismiss the significance of the Respondent's wage proposal because the wage rates would fall within specified ranges for each job classification. But that does not change the fact that the Respondent would retain full control over whether to assign a new hire a wage rate on the higher or lower side of those ranges, or that the Respondent alone would determine what an appropriate wage would be. Nor were those ranges negotiated with the Union during the bargaining sessions at issue; the Respondent's adherence to its proposal foreclosed the possibility of that participation.

My colleagues unconvincingly assert that the Respondent's wage proposals were unproblematic because the Respondent did not reserve the right to decrease wages below current levels. Even so, by insisting on maintaining current wage rates, the Respondent foreclosed the possibility of the Union participating in negotiations for wage increases in subsequent years of the contract. Further, none of this conduct is excused by the Union's proposed wage increases, particularly because the Union, unlike the Respondent, demonstrated its willingness to adjust its proposal in order to reach an agreement with the Respondent.

[9] The majority suggests that the burden was on the Union to ask what the Respondent meant by "reasonable belief" and that because it did not expressly do so, the Respondent's insistence on that amorphous standard did not adversely affect the parties' bargaining. To the contrary, the Union cannot be faulted for assuming that the Respondent intended the phrase "reasonable belief" to have its plain meaning—that the Respondent would retain effectively unreviewable discretion to impose discipline whenever it believed there were grounds for doing so. The Respondent itself certainly suggested no limitation on its discretion. The sweeping nature of this proposal therefore supports the conclusion that, at the time the Respondent made it, it sought very broad control over disciplinary matters.

[10] See also *John Ascuaga's Nugget*, 298 NLRB 524, 525, 527 (1990) (employer's proposal of existing wage rates and exclusive control over wage increases showed bad faith), enfd. sub nom. *Sparks Nugget, Inc. v. NLRB*, 968 F.2d 991 (9th Cir. 1992); *Regency Service Carts*, supra, 345 NLRB at 672–676 (employer bargained in bad faith where it failed to timely respond to information requests and adhered to a proposed management-rights clause that left it with "unilateral control [] over virtually all significant terms and conditions of employment" and insisted on excluding from arbitral review the employer's exercise of discretion under its proposed management-rights clause); *A-1 King Size Sandwiches*, supra, 265 NLRB at 858–859 (employer bargained in bad faith where it insisted on the unilateral right to set wage rates and "total control over virtually every significant aspect of the employment relationship," including discipline and discharge, work rules and regulations, subcontracting, and the transferring of unit work).

98, slip op. at 8 (citing *Regency Service Carts*, supra, 345 NLRB at 672–673).

Here, as in *Kitsap*, the Union's requests included information directly bearing on the Respondent's claims during wage-related negotiations, such as the Respondent's other contracts with hotel clients in the area, documents demonstrating the commission rates and sums paid to those owners, and documents showing the rates that event clients paid over the past year. By refusing to provide this information, the Respondent hindered the Union's ability to meaningfully bargain over wages and respond to the Respondent's bargaining positions.[11] The Board has viewed such refusals, particularly with respect to information bearing on wage negotiations, as evidence of bad-faith bargaining.[12]

D.

In sum, the record amply demonstrates not merely that the Respondent unlawfully failed to provide the Union with information that it needed during bargaining for a first contract, but also that the Respondent engaged in bad-faith bargaining. My colleagues, meanwhile, are mistaken in asserting that the Union did not sufficiently test the Respondent's willingness to bargain prior to filing its bad-faith bargaining charge. The majority recognizes that over the parties' bargaining sessions, the Respondent did not waver from its initial proposals for discipline, wages, and benefit provisions. As discussed above, those proposals would have given it unfettered discretion and control over those terms of employment—and they frustrated further negotiations. Despite some tentative agreements on non-economic provisions, the Respondent remained unmoved on these most basic terms of employment, even if it never expressly said that it was unwilling to bargain or that the proposals were (as the majority puts it) "take it or leave it." Its actions, rather than its words, demonstrate its intentions.[13] Moreover, as the majority concedes, the Respondent only presented revisions to its proposal on discipline and other matters *after* the Union filed its bad-faith bargaining charge. Such after-the-fact evidence has no bearing on the Union's expectation at the time the charge was filed. The Board requires only that a union not itself "remove the possibility of negotiation" such that the employer's good faith cannot be tested. *Times Publishing Co.*, 72 NLRB 676 (1947).

For all of these reasons, the Board should find that the Respondent bargained in bad faith in violation of Section 8(a)(5) and should order an appropriate remedy.[14]

Dated, Washington, D.C. March 12, 2019

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Lauren McFerran Member

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 refuse to bargain collectively with International Alliance of Theatrical Stage Employees, Local 15 (the Union) by failing and refusing to furnish it with

[11] The majority asserts that the Union's wage proposals were based on rates that the Respondent paid in other areas for billable work and that "none of the information requested in bullet points 2–4 was necessary for the Union to grasp the fundamental difference between those employees and the employees at issue here, who are paid a regular hourly wage whether they are performing billable work or not." But the provision of the information could have better illuminated for the Union the merits of the parties' respective proposals, as the information would have allowed the Union to understand the Respondent's business model, develop wage counterproposals, assess the Respondent's claim during negotiations that the Seattle market would not support event rates to cover the Union's wage proposal, and evaluate the Respondent's position that the commissions and contracts it maintained with hotel and convention center properties were nonexclusive and precarious. The mere fact that the unit employees were paid differently did not make the requested information any less relevant or useful, or diminish the impact of the Respondent's failure to provide that information.

[12] See *Kitsap Tenant Support Services*, supra, 366 NLRB No. 98, slip op. at 8; *Landmark Family Foods*, 356 NLRB 1357, 1369 (2011).

[13] *Captain's Table*, 289 NLRB 22 (1988), cited by the majority, is inapposite. In that case, the employer revised its proposals on wages and indicated that its first specific proposal was a "starting point for future negotiations." In contrast, here the Respondent did not offer indications that it would negotiate for anything less than broad control over wages, benefits, and discipline. The Union was not required to wait in the vain hope of a changed proposal.

[14] I would adopt the remedies ordered by the administrative law judge, including a bargaining order and the extension of the certification year, as well as ordering notice-reading. I agree with the majority, however, that the judge erred in ordering the remedial notice to be posted at the Respondent's Philadelphia facilities.

requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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

WE WILL furnish to the Union in a timely manner the information requested by the Union in bullet points 2–4 of its September 2, 2016 information request.

AUDIO VISUAL SERVICES GROUP, INC. D/B/A PSAV PRESENTATION SERVICES

The Board's decision can be found at https://www.nlrb.gov/case/19-CA-186007 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.

Ryan Connolly, Esq. & Patrick Berzai, Esq., for the General Counsel.
David Shankman, Esq. & Michael Willats, Esq. (Shankman Leone, P.A.), for the Respondent.
Katelyn M. Sypher, Esq. (Schwerin Campbell Barnard Iglitzin & Lavitt, LLP), for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. International Alliance of Theatrical Stage Employees (IATSE), Local 15 (Charging Party or Union or Local 15), filed the original charge in this case on October 11, 2016,[1] and a second charge was filed on January 27, 2017. The General Counsel issued the complaint on May 24, 2017 (complaint), and the Respondent Audio Visual Services Group, Inc. doing business as PSAV Presentation Services (Respondent or PSAV) answered the complaint on June 7, 2017, basically denying the material complaint allegations.

This case involves allegations that Respondent: (1) failed to provide relevant financial information after expressing an inability to pay the Union's proposed wage increases for a first collective-bargaining agreement (CBA); and (2) committed other bad acts that constitute bad faith bargaining in violation of Section 8(a)(5) and (1) of the Act. Respondent denies the essential allegations in the complaint and argues that at all times relevant, Respondent bargained in good faith with the Union.

This case was tried in Seattle, Washington, on August 8 and 9, 2017. Closing briefs were submitted by the General Counsel, the Charging Party, and the Respondent on October 13, 2017.[2] On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the closing briefs,[4] I make the following

FINDINGS OF FACTS

I. JURISDICTION

The Respondent is a State of Delaware corporation with offices and places of business in Tukwila, Seattle, Sea-Tac, Bellevue, and Tacoma, Washington, and Philadelphia, Pennsylvania, where it is engaged in the business of providing event technology services at hotels and conference centers. In conducting its operations during the 12- month period preceding issuance of the complaint, which period is representative of all material times, the Respondent received gross revenue in excess of $500,000, and purchased and received at its facilities located within the State of Washington goods valued in excess of $50,000 directly from points outside the State of Washington. I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

I. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The Respondent provides technology nationwide for events, within hotels and conference centers. The Union represents riggers and technicians employed by PSAV.[5] PSAV's riggers and technicians are responsible for the set-up and breakdown of audio and visual equipment used for presentations in client hotels and conference centers—riggers work with scaffolding and

[1] All dates are 2016 unless otherwise indicated.

[2] The Charging Party also submitted a "corrected" closing brief on October 16, 2017, which no party has raised any objection to and, therefore, I accept as the Charging Party Union's closing brief.

[3] The transcript in this case (Tr.) is mostly accurate, but I correct it as follows: Tr. 2 and 161; line (l) 7: "Employer Rhino Northwest" should be "Employer Audio Services Group, Inc." or "PSAV"; Tr. 90; l 2: "prentices" should be "proposals"; Tr. 90, l. 7: "call" should be "hall"; Tr. 172–173: "CVA" should be "CBA."

[4] Abbreviations used in this decision are as follows: "Tr." for transcript; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for the General Counsel's closing brief, "CP Br. For the Charging Party's closing brief; and "R. Br." for the Respondent's closing brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

[5] Rigger CBA's are different than technician CBAs. This case does not involve rigger employees although the Union and Respondent were negotiating *rigger* CBA's at the same time they were negotiating a first *technician* CBA.

attached devices while technicians work with the operation, transportation, maintenance, and repair of equipment. (Tr. 76–77.)

B. Certification

The Union was certified as the exclusive bargaining representative on December 18, 2015[6], as the exclusive collective-bargaining representative of the employees in the following unit:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

On January 4, 2016, the Respondent filed with the Board in Washington, D.C., a request for review of both the Decision and Direction of Election and the Decision on Challenges and Objection and Certification of Representative. On May 19, 2016, the Board denied the Respondent's request for review (the Board's May 19 Denial).[7]

PSAV refused to bargain with the Union from January 4, 2016, until after the Board issued the Board's May 19 Denial.

Pursuant to a charge filed on January 7, 2016, the General Counsel issued a complaint and notice of hearing on June 23, 2016, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union from January 4 to May 23, 2016, following the Union's certification in Case 19–RC–161471.[8]

On May 23, 2016, following the resolution of Case 19–RC–161471, PSAV purportedly began its efforts to bargain. (See Jt. Exh. 1.)

The parties met for their first bargaining session on June 24, 2016, at the Edgewater Hotel in Seattle and then for their second and third sessions on August 17 and 18, 2016. A fourth bargaining session was held on September 19, 2016, and then finally a fifth one on January 24, 2017.

The bargaining team for the Union was comprised of the union local business representative Mylor Treneer (Treneer), the Union's assistant business representative, Aaron Gorseth (Gorseth), and Union Attorney Katelyn Sypher (Sypher). The Respondent was represented at the bargaining sessions by attorneys David S. Shankman[9] (Shankman) and Michael R. Willats (Willats), and at some sessions also by Manager Jason Younce (Younce), VP John Riggi (Riggi), and Manager Laura Brassington (Brassington). (Tr. 78, 88.)

C. Structure of Representation and Respondent's First Unlawful Failure and Refusal to Bargain with the Union from January 4 to May 23, 2016

The Union's relationship with the Respondent includes multiple collective-bargaining contracts (CBAs). In Washington, there is a rigging contract and the parties have been working on an initial technicians' contract since the November 2015 election. (Tr. 75.) Riggers operate differently than those in other bargaining units. PSAV employs riggers who have their own call-list. Treneer was the business agent of Local 15 who was responsible for both the riggers and technicians' CBAs. He was approached by workers who had been gathering cards and he provided them with assistance in completing the organizing drive.

As stated above, the Union won representation in late 2015 which was appealed by PSAV, and PSAV decided not to bargain with the Union during the pendency of the appeal until approximately May 24, 2016.[10] On May 19, 2017, ruling on a motion for summary judgment in Case 19–CA–167454, *the First PSAV case*, the Board found PSAV in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union from January 4 to May 23, 2016.[11]

The International Union and the Respondent also have CBAs with large city technicians who work on an as-needed or on-call basis in cities such as San Diego (SD) and San Francisco (SF) where events come about unexpectedly and require the Respondent to staff these pop-up events with these on-call employees.

D. June 24 Session and Events ON JULY 19 AND Afterwards

As far as the June 24 bargaining session is concerned, the parties largely discussed the successor rigger CBA and only ground rules were set for the technician's initial CBA negotiations. After this bargaining session, PSAV provided the Union at its request, the current wage rates that were being paid by PSAV to the bargaining unit members in Seattle, Sea-Tac, Belleview, Tukwila, and Tacoma, WA (Respondent's status quo wages). (Tr. 168–169; R. Exhs. 1 and 2.)

The Union's first proposed CBA to PSAV in June was comprised of the Union's typical "scaffold agreement" that the Union and Treneer used in other CBAs over the years as a guide before adding the specific wage provisions contained in its next version. (Tr. 78–79, 83, 170; Jt. Exhs. 3–4.)

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[6] The representation elections were held by mail ballot from November 9, 2015, to November 30, 2015, and the Region 19 Regional Director issued a Decision on Challenges and Objection and Certification of Representative in Case 19–RC–161471.

[7] Respondent's Shankman admits that PSAV did not begin good-faith bargaining negotiations with the Union until late May 2016 because PSAV objected to the November 2015 election. Tr. 166–167; Jt. Exh. "1."

[8] On February 12, 2016, Region 19 General Counsel informed the bargaining teams for PSAV and the Union that the unfair labor practice (ULP) Case 19–CA–167454 was "being held in abeyance [by Region 19] pending the Board's ruling on the [PSAV's] request for review in Case 19–RC–167141." (R. Exh. 7.) Despite the General Counsel's deferment of an investigation into the Union's alleged ULP against the Respondent, I find that the Respondent made its own separate business decision not to bargain with the Union from January 4 through May 23, 2016, accepting all associated risks for this conduct.

[9] Shankman has been a lawyer representing Respondent PSAV since 2000 and has negotiated CBA's for PSAV nationwide. Tr. 165. Treneer has been involved in the live events business since 1978 and has negotiated CBAs since 1980. Tr. 74.

[10] See Cases 19–RC–161471 and 19–CA–167454 and *Audio Visual Services Group, Inc*., 365 NLRB No. 84 (May 19, 2017) (otherwise referred to as the First PSAV case).

[11] The First PSAV case, slip op. at 3.

Article "H" in the Union's proposed CBA to PSAV is a draft provision referring to one-hour increments which is common in the Union's CBA's and basically says that if a worker works 15 minutes into an hour, they get paid for a full hour. (Tr. 79–80; Jt. Exh. 3.) The next provision in the Union's proposed CBA refers to if a technician works a 12-hour shift, they get paid time-and-a-half after 8 hours and the proposed language prevents PSAV from bringing in a whole new crew for the last 4 hours to avoid paying overtime. (Tr. 80; Jt. Exh. 3.) Both of these proposed sections would have changed the existing status quo wage conditions at PSAV. (Tr. 79–80.)

Article "Q" in the Union's proposed CBA to PSAV refers to "dismissal for cause" and the Union was seeking a change to PSAV's status quo treatment of its employees to language that also was common in the Union's prior CBA's requiring there to be "just cause" and a progressive discipline policy once "just cause" for discipline had been evoked. (Tr. 81; Jt. Exh. 3.)

Article "R" in the Union's proposed CBA to PSAV involves "grievance and arbitration" language which was, once again, standard language in the Union's prior CBA's, and describes the grievance process, the timeline of the process and how step grievances get resolved up until arbitration. (Tr. 81; (Jt. Exh. 3.) These provisions were proposed changes to the status quo of PSAV's current terms and conditions with its employees. (See PSAV's employee handbook; Tr. 84–85; GC Exh. 2.)

The Union also proposed in June that since it already had a rigger CBA with PSAV, the Union was negotiating the initial technicians' CBA, and there was already a CBA between the International Union and PSAV for the same region, the Union suggested that all three CBA's be combined into one so that only one CBA would need administering in place of 3 separate CBA's. (Tr. 82.) PSAV responded that it was not interested in combining the 3 CBA's into one CBA. Id.

PSAV submitted no CBA proposals at the June bargaining session. (Tr. 82–83.) Instead, PSAV spent its time during the session asking the Union questions about the Union's proposals and being disappointed with the Union for not bringing a full draft contract for PSAV to review. (Tr. 81–83.)

There was a marked uptick in the Union's demand for wages, as represented in the Union's first full CBA proposal sent by the Union to PSAV on July 19. The Union proposal was to have increased wages ranging from $33 to $45 to for a variety of classifications, for example, a technician, who was currently earning between $15 to $18.54 an hour, would be increased to a wage of $33 an hour (the Union's July 19 increased wage proposal). (Tr. 83–84, 169–170; Jt. Exh. 4; R. Exh. 2.)

The Union's July 19 increased wage proposal was anywhere from 73 percent to 120 percent higher than the Respondent's status quo wages and it is distinguished from its earlier June CBA proposal with red-lined additions. (Tr. 83–86, 170–171; Jt. Exhs 3–4; R. Exh. 8.) The Union's July 19 increased wage proposal was created by Treneer, the union bargaining unit contract committee, and the Local's president by reviewing a number of factors such as market rates in the Seattle area and wage rates from other west coast IATSE Locals' CBAs, including agreements with PSAV for its workers in cities like SD and SF. (Tr. 28, 86.)

Respondent's CBA with SF technicians IATSE Local 16, a 27 page agreement, provides that from July 1, 2016 through June 30, 2017, the Respondent pays SF technicians a wage rate that ranged from $32.88 to $93.58. (R. Exh. 11 at p. 17.) Respondent's CBA with SD technicians IATSE Local 122, a 12 page agreement, provides that on May 15, 2015, the Respondent pays SD technicians a wage rate that ranged from $26.89 to $39.21. (R. Exh. 13 at p. 5.)

On August 10, before the next bargaining session, PSAV sent its first counter-proposal with changes marked over to the Union with no proposed wage rates. (Tr. 86–87; Jt. Exh. 5.)

On August 11, PSAV sends the Union an updated and more complete version of the August 10 counterproposal. (Tr. 87; Jt. Exh. 6.) The Respondent's revised proposal included a wage breakdown of its own which did not offer any change to Respondent's current status quo wages referenced above. (Tr. 172; Jt. Exh. 6 at 14; R. Exh. 2.)

PSAV also proposed a broad management rights clause, retaining "sole discretion" not only over customary management rights, but also over "discipline and discharge" and "subcontract[ing] work where deemed necessary [by PSAV] for the business." (Jt. Exh. 6 at art. II.)

PSAV also proposed a grievance and arbitration policy that placed numerous limitations on what could be grieved, excluding "any complaints related to . . . [a]ny discipline that does not involve the loss of time or pay; . . . [a]ny employee grievance where there is no personal relief to the grievant; . . . [a]llegations of discrimination . . .; . . . [u]nfair labor practice charge[s]." (Jt. Exh 6. at art. XIX.) PSAV also rejected the Union's proposal for a "final and binding" arbitration. Id.

E. August 17 and 18 Sessions

The parties next met on August 17 and 18, with the morning of the first day again primarily devoted to the successor rigger unit bargaining. Also present at this meeting for PSAV besides Shankman were Willats, Younce, Rissi, and Brassington. (Tr. 88.)

In the afternoon of the August 17 session, the parties discussed various technician proposals, including economic proposals. Shankman especially did not agree with the Union's July 19 increased wage proposal and he commented to the Union bargaining team in a condescending and dismissive tone that any Respondent agreement with the Union's July 19 increased wage proposal would be financial suicide for the Respondent and drive it underwater. (Tr. 29–30, 89–90.)

Specifically, on August 17, Treneer attempted to make an opening statement in order to share feedback that he had received from bargaining unit members regarding PSAV's August 11 proposed CBA with status quo wages. (Tr. 89.) Treneer told the group that union members were "quite disappointed" with PSAV's unchanged "business as usual" August 11 CBA proposal because the union members had some expectation, perhaps from conversations with PSAV management prior to the November 2015 election vote, that PSAV was going to increase employee wages from the status quo and address some of the union members' concerns. Id.

PSAV's chief negotiator, Shankman, then cut Treneer off and went into a fairly lengthy harangue or lecture about the Union's July 19 increased wage proposal and also about a Facebook posting that had gone up on the Union's bargaining unit's Facebook

page. (Tr. 89.)

Shankman also accused Treneer of being "delusional" and Shankman alleged that Treneer was fraudulently misleading his bargaining unit. (Tr. 29–30, 34, 89–90.)

Shankman then made a number of factual assertions in support of this statements, including that PSAV paid 50 percent commissions to their Seattle hotel and convention center properties on all their labor and event rentals and that the market in Seattle could simply not support the wage rates proposed by the Union in its July 19 increased wage proposal. (Tr. 89–90.)

Shankman continued his vehement and lengthy rebuke to the union bargaining team on August 17 arguing that Respondent's revenue contracts with the Seattle properties were "nonexclusive" and "precarious." (Tr. 31–32, 34, 90–91, 151, 153.) Shankman then argued to Treneer that acceding to the increased wage rates asked for by the Union "would be suicide" for PSAV and "would cause them [Respondent] to lose hotel properties." (Tr. 29, 30–31, 34, 89–91.) Shankman concluded by repeating that PSAV was not rejecting these proposed union wage rates out of stubbornness, but if Respondent accepted them, "the company would be underwater." Id.

The Union's response to PSAV's inability to pay statements on August 17 was to say that Shankman "can expect a request for information based on that information that you [Shankman] provided us [the Union]." (Tr. 35, 89–91.) [12]

Treneer opined that Shankman was basically telling him and the other uUnion representatives that the Union was comparing apples to oranges and the wage rates in SD and SF were for intermittent hiring hall dispatch labor from the relevant IATSE Locals instead of retaining full-time or part-time employees on standby as PSAV did in Seattle. (Tr. 31–32, 34, 90–91.) In fact, Treneer explains that the Union's proposed increased wage rates; instead, were "built not only on these [SD and SF] wages but also wages paid in Seattle locally by PSAV to contractors." Id.

The Union was further notified during the bargaining session by Attorney Shankman that PSAV employs a regular work force within hotels to do both billable and nonbillable work. Gorseth further opined that he was aware of the distinction between the two groups because bargaining unit employees can perform both billable and nonbillable work.

Treneer's specific response during the August 17 bargaining session was to let Shankman know that Respondent should expect a request for financial information related to the Union's July 19 increased wage proposal based on Shankman's response that: (1) the Union's proposed wage increases would make Respondent financially bankrupt; (2) Respondent pays 50 percent commissions to Seattle hotel convention center clients; and (3) Respondent's current client contracts are non-exclusive and precarious. Treneer also admits that the Union informed the Respondent that Respondent's wage proposal simply maintains the status quo with no increases to Respondent's unit employees' wages. (Tr. 35, 89–91.)

On the discussion of wages and overtime, PSAV's August 11 counterproposal deleted most of the language inserted by the Union, and instead inserted language that indicated that they would pay rates consistent with the Fair Labor Standards Act (FLSA) provisions and the overtime laws of the State of Washington. Minor changes were also proposed by PSAV to the articles concerning discipline, recognition, management rights, grievance and arbitration, wages and overtime, among others with PSAV basically maintaining its unchanged status quo language in all these provisions from earlier proposals.[13] (Tr. 91–95; Jt. Exh. 6 vs. Jt. Exhs 7–9.)

At the August 18 bargaining session, a second union counterproposal to Respondent's status quo wages was then made by the Union. (Tr. 95; Jt. Exh. 9 at art. J.) This second union counteproposal, on average, decreased the Union's July 19 increased wage rates by $2 an hour across the board. (Tr. 116; Jt. Exh. 9.)

As stated above, the Union's revised wage rates were, on average, a $2 decrease in hourly wages across the board from its initial July 19 proposal through all four tiers and still represented a range of 64 percent to 106 percent of an increase from the unit technicians' then-current hourly wage rates. The Union's second counterproposal also withdrew some overtime pay provisions that were in the Union's first July 19 increased wage proposal. (Tr. 95 and 97; Jt. Exh. 9; R. Exh. 14.)

Outside of wages, the parties also discussed other topics during this session. (See Jt. Exhs. 7 and 8 for other proposals the Union made.) The Union also moved toward PSAV's position on overtime pay, removing two conditions that would trigger overtime pay from its proposal. (Jt. Exh. 9 at Art. K.) The Union further came back from its July 19 proposed CBA and offered additional changes to the recognition and discipline provisions signaling a willingness to work with PSAV in order to get an initial CBA but which PSAV never provided a counteroffer in response. (Tr. 96–97; Jt. Exh. 7, and Jt. Exh. 8.) Some of the issues were deferred for a later bargaining session. No counteroffers from Respondent were made at this point, but an agreement to meet again in September was established.

F. The Union's September 2 Request for Information to PSAV

Thereafter on September 2, via email from Sypher to Shankman, the Union followed up on Treneer's oral request on August 17 and asked PSAV for financial information about the Respondent, copies of its contracts with various properties in Seattle, and documents showing the rates they charge to event clients,

[12] I reject the findings of the purported Mercer study, R. Exh. 15, because the study post-dates the initial economic proposal by five months and I find Treneer's confident testimony as to what Shankman said on August 17 confirmed by Gorseth and more believable than Shankman's version of what was said at the August 17 bargaining session as Treneer and Gorseth recalled key conversations at ease at hearing while Shankman testified quickly with what appeared to be less reliable scripted testimony. Moreover, despite Willats, Younce, Rissi, and Brassington all being present at the August 17 and 18 bargaining sessions for PSAV with Shankman, none of them testified at hearing about what Shankman said or did not say on August 17. In addition, The Union's version of facts is more consistent with the rest of the record including the nonmovement from Respondent's status quo positions at negotiation sessions and in general from November 2015 through August 18, 2016, and thereafter. See Tr. 192–193; Jt. Exhs. 4–11, 13–17.

[13] Treneer pointed out overtime paid by PSAV to union employees in California and Shankman rejected it for the Union in this case not for financial reasons but, instead, saying that the provision is mandated by CA state law but not by WA state law. Tr. 93.

seeking to see if the Respondent could substantiate its claims about its inability to pay the Union's proposed increased wages. (Jt. Exh. 10 at 2.)

The September 2 Union request for information specifically provides:

> Dear David [Shankman]:
>
> We write with respect to your remarks on PSAV's economic position at the parties' most recent bargaining session [on Aug. 17]. To further the parties' negotiations, Local 15 would like to better understand PSAV's financial position.
>
> At the session, you expressed PSAV's inability to pay the wages requested by the tech bargaining unit in strong terms, stating both that Local 15's wage proposal "would put [PSAV] underwater" and "would be suicide for [the] company." You also connected the company's inability to pay the wages requested both with the commissions that it pays back to its hotel property clients and the rates it charges for its services to event clients, stating that "50% of our revenue, roughly, goes to commissions" to the hotel properties and that "the money [needed pay [siq.] the wages requested] isn't there based on the market rates that can be charged" for PSAV's event services to clients.

Thus, Local 15 makes the following request for information from PSAV:

- Documents sufficient to substantiate PSAV's claim of its inability to pay the requested wages; particularly, we request that the company provide documents that demonstrate the company's gross revenues, expenses, and profits for 2015 and 2016 to date (Bullet Pt. 1);
- PSAV's current contracts with any and all of its hotel clients in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma (Bullet Pt. 2);
- If the contracts requested above don't expressly establish the commission rates and sums PSAV has paid to such property owners between January 1, 2015 and the present, documents that demonstrate that information (Bullet Pt. 3); and,
- Documents sufficient to show the rates charged to all event clients to whom PSAV has provided service in the cities listed above within the past year (September 1, 2015 to present) (Bullet Pt. 4).

(Tr. 98–101; Jt. Exh. 10 at 2.)

The Union requested this specific financial information from PSAV because of the direct relationship between the assertions made by Shankman at the bargaining table on August 17 about PSAV's financial position, the terms and nature of its contractual relationship with its clients, and the wage rates that PSAV in Seattle could or could not sustain based upon the rates PSAV charged. (Tr. 35, 99–101.)

The September 2 union request for information concludes with the Union informing PSAV that it is willing to enter into an appropriate confidentiality agreement to cover the requested documents and if the last bullet point "proves unduly cumbersome," the Union is willing to negotiate some representative sample of the requested documents that will meet the Local's need. (Jt. Exh. 10 at 2.)

G. PSAV's September 6 Response to the Union's September 2 Request and Its Attempt to Retract the August 17 Session Conversation

In response on September 6, Attorney Shankman sent an email to Treneer, Sypher and Respondent's attorney Willats, in which Shankman thanks the Union for its September 2 request and adds the following:

> However, it [the September 2 request] grossly misstates the context in which the statements [from Shankman at the August 17 bargaining session] were made. What I [Shankman] was explaining during our negotiations is that *no employer in this business would pay such a [n increased] wage [rate] to its hourly workforce that was so grossly outside of its business model [and] that if it did so, it would be suicide for the company.* This is not an inability to pay for lack of revenue. It's a refusal to pay an hourly rate that would be detrimental to the business. … [citations omitted.] No such claim of inability to pay was ever made.[14]

(Jt. Exh. 10 at 1.)(Emphasis added.)

Shankman's September 6 email response to the Union's request for information also provides:

> The balance of your request (hotel contracts, commission rates and rates charged to end clients) is premised off of your inability to pay claim which we clearly did not assert. Indeed, and keep this in perspective (either for purposes of your request or the negotiations going forward), we shared with you the issue of commissions not to explain hardship or inability to pay wages. Rather, we shared this in the context of explaining why we can pay higher union-call rates for *billable* events vs. the rates being paid to PSAV's regular hourly employees for many hours which are not-billable. There was no connection between these circumstances other than that. Finally, to the extent this request would be made but not tied to the above-issues, we decline to provide this information as it is proprietary and confidential business information.

(Tr. 97–101; Jt. Exh. 10.) (Emphasis in original.)

At no time prior to the hearing, however, did Shankman or Respondent provide the Union with the Respondent's SD or SF CBAs or supply the Union with the requested wages paid in Seattle by PSAV to contractors to explain or clarify to the Union

[14] Treneer convincingly recalled that at no time during Shankman's August 17 lecture to the Union's negotiating team did Shankman ever say that "no employer" in this business would pay such a wage as proposed by the Union on July 19 because Shankman did not say this and because Treneer knows there are employers who pay those same wage rates proposed by the Union. Tr. 101–102. Moreover, Treneer and Gorseth both had clear recollections at hearing that Shankman did not state that "no employer" in the industry could or would be able to pay such wages, but instead, that Shankman was asserting that PSAV's company, specifically, would be bankrupted and unable to pay the Union's wage proposals. Tr. 31, 101–102. As a result, I reject as untrue Shankman's attempt to re-shape his statements from August 17 by adding the "no employer in this business" language to his September 6 email.

Shankman's distinction in wage rates paid by Respondent between the International Union's members working on an intermittent hiring hall dispatch labor basis and the unit employees here who work as billable and nonbillable employees. (See Tr. 29, 31–32, 34, 90–91; R. Exhs. 9–11 and 13.) Once again, Respondent's CBA with SF technicians IATSE Local 16, a 27 page agreement, provides that from July 1, 2016 through June 30, 2017, the Respondent pays SF technicians a wage rate that ranged from $32.88 to $93.58. (R. Exh. 11 at p. 17.) Respondent's CBA with SD technicians IATSE Local 122, a 12-page agreement, provides that on May 15, 2015, the Respondent pays SF technicians a wage rate that ranged from $26.89 to $39.21. (R. Exh. 13 at p. 5.)

The Union never received any of the requested financial information from Respondent and the Respondent never proposed any change to its status quo wages in response to the Union's two economic counterproposals on July 19 and August 18.

H. September 19 Session

Both parties drafted proposals and presented them during a third bargaining session in late September. PSAV's proposal did not include any changes to its then-current status quo wage rates it proposed maintaining nor to the discipline article. (Tr. 103–105; Jt. Exh. 11, art. 9 and 18.) The Union's counterproposal did not include an updated wage provision to its two earlier wage proposals because they had already made two wage proposals to Respondent with no counterproposals offered by Respondent that increased wage rates from the status quo. (Tr. 103–105.)

The Union reasoned that this was because discussions of wages, including overtime, would be "shut down" at the bargaining session by Shankman under the vague justification that any changes to employee wages would apparently be contrary to Respondent's business model. (Tr. 105–106.) When the Union tried to ask PSAV financial questions that it had put at issue during the prior bargaining session related to the rates PSAV charged for equipment and labor, PSAV continued to refuse to answer. (Tr. 105–106.)

I. October 13 PSAV Letter to Union Team and All of Its Members and Allegations of Direct Dealing

Shankman then sent an October 13 letter to Treneer and the entire technicians' bargaining unit, which disputes the basis of the Union's wage proposals and explicitly states that PSAV will not agree to the proposals, whether on wages or scheduling, and that PSAV is not "required to deviate from the business model that works throughout the Company." (Tr. 107; Jt. Exh. 13.)

PSAV sent over another proposed CBA ahead of a suggested November bargaining session that contained the same status quo language for job classifications and wages article, discipline, and grievance and arbitration articles. (Tr. 106–109; Jt. Exh. 14.)

J. January 26 Session and Thereafter

In preparing for the next bargaining session, PSAV sent over another proposal. (Jt. Exh. 15.) The relevant article provisions in question once again did not change. Both sides canceled upcoming bargaining sessions in November and December so the next bargaining session did not take place until January 2017. (Jt. Exhs. 14–16.)

After some back-and-forth, the parties agreed to meet for another session of bargaining. The Union forwarded to the Respondent a counterproposal and the PSAV did the same. (Jt. Exhs. 16 (Union) and 17 (PSAV).) The Union's proposal did not include economic proposals for the reason that PSAV did not include any increased or changed economics in its latest proposal. (Tr. 112–113.) This session was brief, lasting less than 3 hours, and was only attended by Treneer, Sypher and Willats. (Tr. 109–110, 112.)

Some noneconomic tentative agreements (TA's) between the Union and PSAV were agreed to, however. The PSAV proposal did include some minor changes to the section on discipline. (Jt. Exh. 17, art. 18.) This proposal also accepted certain non-material changes made by the Union to the grievance and arbitration section. (Tr. 111; Jt. Exh. 17 at 25.)

No further bargaining sessions occurred after the January 2017 session. (Tr. 114.) By this time, the Union had sent to PSAV two counterproposals, Jt. Exh. 4 and Jt. Exh 9, which contained economic employee wage rate classifications and the unanswered September 2 request for financial information. After PSAV refused to provide the information requested since September 2, the Union was unable to formulate economic proposals, a position it communicated to PSAV. (Tr. 151–153; Jt. Exh. 10 at 3.) PSAV had proposed maintaining the status quo for all wage classifications for the bargaining unit technician's employees from January 2016 through and after the January 2017 bargaining session without any material compromise on wages, scheduling, discipline, management rights, or arbitration. (Tr. 108; R. Exh. 2, Jt. Exh. 6, Jt. Exh. 11, Jt. Exh. 14, Jt. Exh. 15, Jt. Exh. 16, and Jt. Exh. 17.)

On January 27, 2017, the Union filed a new unfair labor charge in Case 19–CA–192068 alleging that Respondent had failed to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act. (GC Exh. 1(c).)

K. Summary of Negotiations

1. PSAV's unchanged economic provisions

As part of the Union's July 19 increased wage proposal, the Union also sought to change the 8 existing wage classifications to a four-tier wage structure within the bargaining unit with wages ranging between $33 and $45 per hour. (Tr. 86; Jt. Exh. 4.) The Union's July 19 increased wage proposal also included changes to other economic terms and conditions such as minimum-call pay, shift differential, and overtime. Id. PSAV completely rejected the Union's tier-based system and instead proposed simply maintaining an unchanged status quo wage system with each classification having a specific pay range of several dollars an hour, the lowest range being $15-$18 an hour and the highest being $25-$30 an hour. (Tr. 93; Jt. Exh. 6.) PSAV's unchanged wage proposal also maintained its "sole and absolute discretion . . ." to set wage rates within a classification. Id.

When wages were discussed at the August 18 bargaining session, the Union proposed a new counteroffer that reduced wage rates by $2 per hour across the board and removed some of the proposed overtime pay language. (Jt. Exh. 9.) In response, PSAV failed to move off their status quo wage proposal and refused to compromise at all, stating that the Union's proposal was not consistent with PSAV's business model. (Tr. 93, 97.) Once again, it was at these August 17 and 18 sessions that Shankman for PSAV

made a number of assertions regarding why PSAV was unable to pay what the Union was putting forth which ultimately led to the Union's September 2 information request. (Jt. Exh. 10.)

After already making two unanswered wage counterproposals and as the Union waited for the requested financial information from PSAV to gauge the veracity of Shankman's August 17 statements reduced to the Union's September 2 information request, PSAV continued to provide proposals after the August 18 session which made no material movement on economics, simply maintaining its initial unchanged status quo wage proposal and unilateral discretion within the classification wage ranges. (Tr. 113; Jt. Exhs. 11, 14, and 17.) In addition, unchanged throughout, PSAV also proposed retaining the preexisting company practices which apply to all union and nonunion employees with respect to benefits. (See, e.g., Jt. Exh. 6 at art. XVII.)

2. PSAV's unchanged noneconomic provisions

(a.) Discipline and discharge provision

As stated above, the Union's initial counter-proposal in June to PSAV included a progressive discipline system and required that PSAV have "just cause" for discipline and discharge. (Tr. 81; Jt. Exh. 3.) PSAV responded by rejecting any "just cause" standard and, like all other subjects, simply proposed to maintain the status quo, rejecting both the progressive discipline system and "just cause" provision. (Tr. 94; Jt. Exh. 6.) The Union proposed a compromise in August which added a list of misconduct that would constitute grounds for immediate termination, but PSAV once again stubbornly maintained its status quo for this provision both at the August and September sessions. (Tr. 96–97, 108; Jt. Exh. 8.) Even when PSAV finally made a change to its disciplinary proposal later in January 2017, it was not a substantive change as PSAV retained unilateral discretion. (Tr. 113; Jt. Exh. 17.)

(b) Grievance and arbitration provision

PSAV also proposed a grievance and arbitration policy that placed numerous limitations on what could be grieved, excluding "any complaints related to . . . [a]ny discipline that does not involve the loss of time or pay; …[a]ny employee grievance where there is no personal relief to the grievant; . . . [a]llegations of discrimination . . .; . . . [u]nfair labor practice charge[s]." (Jt. Exh 6. at art. XIX.) PSAV also rejected the Union's proposal for a "final and binding" arbitration. Id. While PSAV appeared willing to consider arbitration, it rejected final and binding arbitration. (Tr. 108; Jt. Exhs. 11, 14, and 17.)

(c) Management-rights provision

PSAV also refused to move from its initial proposal to maintain an expansive management-rights clause as part of its initial proposal to the Union in August. (Tr. 149; Compare Jt. Exhs 5-6 with Jt. Exh. 11 at art. II, with Jt. Exh. 14 at art. II, and Jt. Exh. 17 at art. II.) Under this proposal, PSAV would retain the sole right to determine terms and conditions of employment such as discipline and subcontracting.

L. The Philadelphia Union Organizing Campaign in February 2017

Respondent employee, Phillip M. Effinger (Effinger), in Philadelphia, asserted at hearing that an election was held on February 17, 2017, to certify IATSE- Local 8, as the sole bargaining representative on behalf of PSAV bargaining unit technician employees in the Philadelphia region.[14] (Tr. 59.)

As a result of the union organizing drive, on February 16, 2017, before the vote, PSAV held a mandatory meeting in Philadelphia with 60 or so technician employees, during which upper management of PSAV spoke. (Tr. 59–60.) PSAV's CEO McIlwain spoke as well and presented a PowerPoint presentation to employees, which made the statement that, "Collective bargaining does not always result in an agreement. . . . PSAV will not enter into an agreement that would negatively impact our business model." (R. Exh. 3 at 10.)

In his oral presentation, McIlwain further painted "a dismal picture of what was going on with [PSAV's] negotiations [with the Union] in Seattle." (Tr. 59–60.) McIlwain stated that "things aren't going well with the negotiations in Seattle, so they could very well go the same way in Philadelphia," and referenced the negotiations being "drag[ged] out and nothing happening." Id. Effinger opined that CEO McIlwain was trying to get the Philadelphia technicians to use the Seattle stalemate as a warning and that they should vote "no" in the next day's representative election.[15] (Tr. 62–64.)

On February 17, 2017, the Union filed an amended unfair labor charge in Case 19-CA–192068 alleging Respondent continued to fail to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

Analysis

A. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, and 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)), enfd. 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. My credibility findings are generally incorporated into the findings of fact set forth above.

B. PSAV Has a Duty to Provide the Union with Its Requested Information That Is Necessary and Relevant to the Union's Performance of Its Duties as Union Representative

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when Respondent refused to provide

[14] PSAV's Human Relations vice-president, Kellie Russell (Russell), corroborated the existence of such a union organizing drive involving PSAV and Local 8.

[15] This impression is also confirmed by looking to the PowerPoint presentation itself from January 26th, where Respondent on its Slide entitled "We are PSAV" included a bullet point stating, "Please Vote 'No' on Friday." R. Exh

the Union the September 2, 2016 requested financial information.

1. The duty to provide relevant and necessary information after a claim of financial inability is made

An employer violates Section 8(a)(5) of the Act by refusing to provide the collective-bargaining representative of its employees with requested information to substantiate a claim that it cannot afford to agree to bargaining demands. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149 (1956). The predicate for this doctrine is, as stated by the Supreme Court: ''Good-faith bargaining . . . requires that claims made by either bargainer should be honest claims.'' (Id. at 152.)

A claim of financial inability to pay is not the same as a claim of competitive disadvantage. In the former instance the employer claims it cannot pay and in the latter simply asserts it will not pay. *Nielsen Lithographing Co.,* 305 NLRB 697, 700 (1991), affd. sub nom. *Graphic Communications Local 50B v. NLRB*, 977 F.2d 1169 (7th Cir. 1992). An unwillingness to pay does not trigger an employer obligation to turn over financial records. Claims of economic hardship and business losses can reasonably convey "a present inability to pay" and "must be evaluated in the context of the particular circumstances [of the] case." *Lakeland Bus Lines, Inc.,* 335 NLRB 322 (2001), citing *Nielsen Lithographing Co,* supra, and *Shell Co.,* 313 NLRB 133 (1993). "'Inability to pay' means that the company presently has insufficient assets to pay or that it would have insufficient assets to pay during the life of the contract that is being negotiated." *AMF Trucking & Warehouse, Inc*., 342 NLRB 1125, 1126 (2004).

In the instant matter, Respondent's chief negotiator, Shankman, vehemently expressed during August 17 negotiations that Respondent could not afford to pay the Union's increased wage proposals and that acceding to the increased wage rates would cause Respondent to lose hotel property clients and go "underwater" or become bankrupt or insolvent as it would "be suicide" for Respondent to agree to pay the Union's increased wage proposals.

Respondent argues that it intended to say that Respondent "would not pay" the increased wage rates proposed by the Union because the Union was mixing apples with oranges and confusing the different type of technician work the Respondent had in Seattle versus SF and SD. I find that the Union's increased wage rates are not unreasonable, illogical, or submitted in bad faith as Respondent argues as the Union's proposed increased wage rates ranged from $33 to $45 for a variety of classifications as compared to what PSAV pays in SF and SD technicians' wage rates in 2016 and 2015 respectively, ranging from $32.88 to $93.58 in SF and $26.89 to $39.21 in SD. The Union also sought financial information from the Respondent tied to Seattle wages paid by PSAV to contractors. Moreover, at no time prior to the hearing did Shankman or Respondent provide the Union with the Respondent's SD or SF CBAs or supply the Union with the requested wages paid in Seattle by PSAV to contractors to explain or clarify to the Union Shankman's distinction in wage rates paid by PSAV to the International Union's members working on an intermittent hiring hall dispatch labor basis and the unit employees here who work as billable and non-billable employees.[16] (See Tr. 29, 31–32, 34, 90–91; R. Exhs. 9–11 and 13.)

I find that these August 17 Shankman statements convey an inability to pay the Union's increased wage proposal under the unique circumstances of this case especially where here the Respondent comes in as a recidivist employer having previously failed and refused to recognize and bargain with the Union from January 4 to May 23, 2016. See the *First PSAV case*, 365 NLRB No. 84, at slip op. 3. As a result, Respondent started out in the negative when considering factors or events to the totality of circumstances analysis of Respondent's conduct from November 2015 when the Union won its election through at least October 11 when the Respondent continued to fail to furnish the Union with the requested financial information. I find that making no substantial movement in economical and noneconomical provisions during bargaining sessions to maintain the status quo is Respondent's chosen business model when one looks at the totality of circumstances.

I further find that beginning 20 days after uttering his inability to pay message to the Union and continuing PSAV's refusal to furnish the requested information, Attorney Shankman disingenuously and in bad-faith attempts to put forth his semantical twist and denies making any such inability to pay statement as applied *specifically to Respondent* rather than to *all employers* in the same industry. (Jt. Exh. 10.) (Emphasis added.) Consequently, from on and after September 6, PSAV's Shankman's inability to pay statements morphed to become the more vague statement that no employer in this business would pay such an increased wage rate to its union employees that is so grossly outside of its business model. Id. Notably, however, Shankman never retracted or pulled back any of his other August 17 assertions made in support of his earlier inability to pay statement such as his statement that PSAV paid 50 percent commissions to its Seattle hotel and convention center clients and that the Seattle market could not support the Union's proposed increased wage rates. This incongruity of statements from Shankman as to PSAV's true financial status is further evidence causing me to doubt the veracity of Respondent's changing positions.

The Board has repeatedly held that where, as here, an employer predicates its bargaining position as a matter of necessity by reason of current alleged financial losses or pending bankruptcy, the bargaining union is entitled, on request, to information pertaining to the alleged losses and their impact on the employer's business. The employer violates its bargaining obligation by failing or refusing to provide such information, notwithstanding an express disclaimer that it is pleading inability to pay, where the thrust of the employer's position indicates otherwise. The employer's entire course of conduct should be examined to determine whether the retraction or disclaimer "rings hollow." See *Shell Co*., 313 NLRB 133–134 (1993); *International Chemical Workers Union v. NLRB,* 467 F.3d 742 (9th Cir. 2006);

[16] I also reject Shankman's sole testimony that PSAV informed the Union at an August bargaining session that Shankman referred Treneer to speak with Bill Gearns of the international union to better understand PSAV and its business. See Tr. 187–189. Shankman's September 6 email response makes no reference to these alleged facts and no other testimony from any of the other 6 witnesses at the August 17 and 18 bargaining sessions confirm Shankman's statements.

Continental Winding Co., 305 NLRB 122, 125 (1991); *Facet Enterprises*, 290 NLRB 152, 153 (1988), enfd. 907 F.2d 963, 979–981 (10th Cir. 1990); *Clemson Bros*., 290 NLRB 944 (1988); and *C-B Buick*, 206 NLRB 6, 7–8 (1973), enfd. in relevant part 506 F.2d 1086 (3d Cir. 1974).

Respondent argues that where an employer makes clear that it is not pleading inability to pay or if an employer retracts its earlier claimed inability to pay, the Board will not require the employer to open its books to the union. In this regard, Respondent cites *Coupled Products, LLC*, 359 NLRB 1443, 1453 (2013)[17]; *Media General Operations, Inc*., 345 NLRB 195, 198 (2005); and *American Polystyrene Corp*., 341 NLRB 508, 509 (2004), reversed in full *International Chemical Workers Union v. NLRB,* 467 F.3d 742 (9th Cir. 2006).[18] These cases are inapposite for the reasons noted in footnotes 18 and 19 below and for the following reasons.

In *Coupled Products*, the Board found that, unlike here, the employer never claimed an inability to pay the union's demands but, instead, the employer consistently told the union that in order to be "competitive" it needed a pay reduction. *Coupled Products*, supra at 1452–1453. In *Media General Operations*, the Board held that an "inability to pay" statement can be retracted under certain conditions not present in this case. The Board in *Media General Operations* goes on to hold:

> "It may well be that an employer cannot make a clear claim of inability to pay and then say 'disingenuously or in bad faith' that it never made such a claim. [citing] *Lakeland Bus Lines v. NLRB*, 347 F.3d [955,]at 964 [(D.C. Cir. 2003)]. However, the Respondent here made a claim that, at worst, could be interpreted as a claim of inability to pay and then clarified that this was not its claim.

Id. at 198. The Board further affirmed the administrative law judge in *Media General Operations* who found that the employer's statement that it was unable to pay was not made in bad faith but was taken out of context and meant that employer was losing money, not that it had insufficient assets to pay the bonus.

In this case, examining the Respondent's entire course of conduct here as stated above, I further find that PSAV's attempt to retract Shankman's clear inability to pay statements was made disingenuously and in bad faith as part of PSAV's semantical game consistent with its past unlawful refusal to bargain conduct in *the First PSAV case.* PSAV did not retract its pending insolvency painting its upcoming source of funds as being doubtful and unreliable. (Tr. 31–32, 34, 90–91, 151, 153.) Moreover, I further find that PSAV's business strategy all along from November 2015 through at least October 11, 2016, was to maintain its prior nonunion status quo for as long as possible even after the Union won its election in November 2015.

Accordingly, I conclude that Respondent claimed financial inability to pay for the Union's proposed increased wages during its collective bargaining with the Union and violated Section 8(a)(5) and (1) of the Act by refusing to furnish since September 6 the requested financial information to the Union.

2. Alternatively, the Union's bullet point Items 1–4 are relevant and necessary to the Union's representative duties and Respondent's refusal to produce this information is further bad-faith conduct

An employer has a duty to furnish a union representing its employees with requested information that is relevant and necessary to the union's performance of its duties as the collective-bargaining representative, including contract negotiations, contract administration, grievance adjustment, and other representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). Accord: *Centura Health St. Mary-Corwin Medical Center*, 360 NLRB 689 (2014). Because the duty to furnish information is meant to further the union's ability to represent the bargaining unit, information pertaining to unit employees' terms and conditions of employment, such as their wages and hours of work, is presumptively relevant to the union, and the burden is on the employer to rebut the relevance of the information requested. *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989). See also *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976).

By contrast, information concerning extra or nonunit employees is not presumptively relevant; rather, relevance must be shown by the requesting party. *Shoppers Food Warehouse Corp.*, 315 NLRB 257, 259 (1994). The burden to show relevance, however, is "not exceptionally heavy," *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983); "[t]he Board uses a broad, discovery-type standard in determining relevance in information requests." *Shoppers Food Warehouse*, supra at 259.

Notably, once the burden of showing the relevance of nonunit information is satisfied, the duty to provide the information is the same as it is with presumptively relevant unit information. Depending on the circumstances and reasons for the union's interest, information that is not presumptively relevant may have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co. of America v. NLRB,* 412 F.2d 77, 84 (2d Cir.), cert. denied 396 U.S. 928 (1969). "[A]n employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.,* 346 NLRB 1159, 1159–1160 (2006).

This follows from the Supreme Court-approved understanding that under the Act "[g]ood-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. . . . If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). As the Supreme Court

[17] This case is not proper precedent as on June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning,* 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid which invalidated this case.

[18] The General Counsel and Respondent leave out the proper citation indicating that the Ninth Circuit Court of Appeals, the circuit court where the instant proceeding arises, reversed the Board on June 30, 2006, granting the Union's petition to review and remanding the case to the Board with directions to reinstate the ALJ's January 24, 2003 Decision and Order. *International Chemical Workers Union v. NLRB*, 467 F.3d 742 (2006). I admonish both parties' counsel here as it is it bad form to omit either "convenient" or "inconvenient" case reversals from closing briefs.

explained in *Truitt,* relying on principles adhered to since the earliest years of the Act, when a party asserts its positions without permitting proof or independent verification, "[t]his is not collective bargaining." 351 U.S. at 153 (quoting *Pioneer Pearl Button Co.*, 1 NLRB 837, 842–843 (1936)).

The failure to provide requested relevant information is a violation of Section 8(a)(5) of the Act. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012); *Brooklyn Union Gas Co.,* 220 NLRB 189, 191 (1975)*; Procter & Gamble Mfg. Co.,* 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

Here, the minimal burden the Union would be required to carry to establish the relevance of the information requested from PSAV, again, was outlined in its September 2 email. In this communication, the Union detailed item by item how the requested information would enable to the Union to better understand and evaluate PSAV's financial concerns for paying Union technician bargaining unit employees' proposed higher wages. Moreover, the Union requested this specific financial information from PSAV because of the direct relationship between the assertions made by Shankman at the bargaining table on August 17 about PSAV's financial position, the terms and nature of its contractual relationship with its clients, and the wage rates that PSAV in Seattle could or could not sustain based upon the rates PSAV charged. (Tr. 35, 99–101.)

I further find that starting at the August 17 bargaining session, it was unclear to the Union what the Respondent was really saying when Shankman's words equated to PSAV's "inability to pay" the Union's proposed increased wages. All that the Shankman and Respondent told the Union was that the Union's July 19 and August 18 proposed increased wages did not fit Respondent's business model and the Respondent asserted why this was referencing the same 4 bullet points that became the Union's September 2 request for financial information. As a result, these 4 bullet point assertions by the Respondent is all the Union had to go on to get more information so it was not continuing to be the only party at the bargaining table proposing a change to the status quo. Even if the Respondent was arguing the "status quo" had to be, PSAV's 4 assertions backing that up were the only way the Union could move forward.

Also in the present case, Respondent has completely refused to respond to the Union's August 17 and September 2 information requests. Respondent argues that it never claimed "inability to pay" and therefore the duty to provide information was never triggered. The Respondent's arguments (R Br. at 11–14) to the contrary are unavailing. Viewing Respondent's September 6 email response to the Union's request for information, the Respondent contends that the financial data sought in the requested financial documents is irrelevant because it "is premised off your inability to pay claim. . . . (Jt. Exh. 10.) Even more fundamentally incorrect is the Respondent's contention (R. Br. at 13) that the Union's request for the financial documents comprised in its September 2 four bullet points "is clearly the type of general financial information that even the decision in *Caldwell* would not have required be provided." The Respondent's contention is incorrect.

Respondent's assertions regarding "inability to pay" fall short. The Board in *Caldwell Mfg. Co.,* 346 NLRB 1159, 1160 (2006), openly rejected the notion that only assertions of "inability to pay" will trigger a duty to disclose information. The Board instead held that "when there has been a showing of relevance, the Board has consistently found a duty to provide information such as competitor data, labor costs, production costs, restructuring studies, *income statements*, and wage rates for nonunit employees." (Emphasis added.) See also *General Counsel Advice Memorandum in Rotek, Inc.* Cases 08–CA–099704 et. al. (Nov. 26, 2013)(Same).

In *Caldwell*, the Board specifically held that "the General Counsel established that the information was relevant, because it would have assisted the Charging Party in assessing the accuracy of the Respondent's proposals and developing its own counterproposals. The record evidence demonstrates that the Charging Party's requests were made directly in response to specific factual assertions made by the Respondent in the course of bargaining." (Id.) A similar result was reached in *KLB Industries, Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012), wherein the company sought wage concessions on the basis of competitive pressures it claimed to be facing. In *KLB,* the court reaffirmed the Board's holding that when the company relied on competitive pressures to justify wage concessions it "made the veracity of that claim relevant to the negotiations." (Id. at 557.) The reasoning and rationale of *Caldwell* and *KLB* is particularly applicable to the facts of this case and directly address the very questions presented.

The information requests at issue is a request for information in order to prepare for first-contract bargaining. All of the outstanding information requested by the Union (its four bullet points) is relevant information as it is necessary information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations. See *Caldwell Mfg. Co.,* 346 NLRB 1159, 1159–1160. Respondent has failed to rebut the discovery-like relevance standard in play here.

Here too, the requested information is relevant because it will assist the Union in assessing the accuracy of the Respondent's August 17 bargaining statements and proposals and for developing the Union's own counterproposals. The Respondent must concede that its claim that PSAV was unable to pay the Union's increased wages was an important one; not only relevant but a central premise for the bargaining negotiations. It was a claim supported by Shankman's statements that PSAV's current contracts with its hotel and convention center clients in the Seattle area were precarious and unreliable and that PSAV does not allow these higher wages and that if untrue, or if not the whole story, could have significant ramifications for the negotiations. Given this, it is simply inconsistent with the Act for the Union to be required to take Shankman's word on this important matter that the requested financial records are too general or not relevant here. The documents to verify this claim were requested and should have been provided.

The preponderance of the evidence shows that Respondent specifically told the Union that Respondent was unable to pay the Union's proposal to increase wages and did not fully explain any misunderstanding between the parties until the hearing in

this case. Moreover, the Respondent firmly held onto its status quo positions from May 24, 2016 through February 17, 2017 without any material compromises offered to the Union. By the time of hearing, it was too late to retract Respondent's prior "inability to pay" statements and this combined with Respondent's condescending and dismissive attitude toward the Union and its prior bad faith conduct from January 4 through May 23, 2016, provide special circumstances for Respondent to produce the requested financial information.

As a result, I further find that the General Counsel has demonstrated that this four-bullet pointed requested information was relevant and necessary to the bargaining with PSAV under a liberal discovery standard. I further find that the Respondent was under a duty to supply the Union with the financial documents upon the Union's four bullet point request. To the extent none of the four categories of financial documents have been provided, the Respondent has unlawfully failed to provide it upon the Union's request in violation of Section 8(a)(5) and (1) of the Act.

Respondent also argues that the Union acted in bad faith here and that PSAV should receive a pass because of this. I find that if the Respondent really believed that the Union was acting in bad faith, it could have filed its own unfair labor practice claim. Since it did not and given Shankman's other less than credible and rejected assertions, I further find that PSAV's argument that the Union somehow acted unlawfully is unsupported by the evidence and lacks merit. Lastly, PSAV argues that the requested financial information is proprietary and confidential. However, if PSAV was concerned about the confidentiality of the information, it was obligated to propose and bargain over a reasonable accommodation, such as redacting the information and/or restricting its use. The burden is on the employer not the union to propose a precise option to providing the information. See *A-1 Door &Building Solutions,* 356 NLRB 499, 500–501 (2011); and *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). See also *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20–21 (D.C. Cir. 1998), and cases cited there. There is no evidence that PSAV ever did so.

By the August 17 oral request and September 2 email, the Union requested that PSAV furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective–bargaining representative of the unit. Since about September 6, 2016, the Respondent has failed and refused to furnish the Union with the requested information. Accordingly, I find that PSAV's refusal to provide the Union with the requested financial information violated Section 8(a)(5) and (1) of the Act, as alleged.

C. The Totality of PSAV's Conduct Shows a Lack of Good Faith Bargaining

Section 8(d) of the Act defines the obligation of employers to bargain collectively as the "obligation … to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." The obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession." A party who enters into negotiations with a pre-determined resolve not to budge from an initial position, however, demonstrates "an attitude inconsistent with good-faith bargaining." *General Electric Co*., 150 NLRB 192, 196 (1964*)*, enfd, 418 F.2d 7736 (2d Cir. 1969), *discussed in American Meat Packing Co*., 301 NLRB 835 (1991). Nevertheless, the Board considers the context of the employer's total conduct in deciding "'whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.'" *Public Service Co. of Oklahoma*, 334 NLRB 487 (2001) (quoting *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984)), enfd. 318 F.3d 1173 (10th Cir. 2003).

In determining whether the employer bargained in good faith, the Board may not "sit in judgment upon the substantive terms of collective bargaining agreements." *NLRB v. Am. Nat'l Ins. Co*., 343 U.S. 395, 404 (1952). However, in determining good faith, the Board should examine the totality of the circumstances, including the substantive terms of proposals. *Public Services*, 334 NLRB at 488; see also *Borden, Inc. v. NLRB*, 19 F.3d 502, 512 (10th Cir. 1994) (noting also that "rigid adherence to disadvantageous proposals may provide a basis for inferring bad faith"); *Colorado-Ute Electric Assn. v. NLRB*, 939 F.2d 1392, 1405 (10th Cir. 1991) (recognizing the same). "Sometimes, especially if the parties are sophisticated, the only indicia of bad faith may be the proposals advanced and adhered to." *NLRB v. Wright Motors, Inc*., 603 F.2d 604, 609 (7th Cir. 1979). For example, an employer's predetermined and inflexible position toward union security and merit increases has helped to support a finding of surface bargaining. *Duro Fittings Co.*, 121 NLRB 377 (1958). In *Irvington Motors*, 147 NLRB 377 (1964), enfd. 343 F.2d 759 (3d Cir. 1965), the employer violated the Act by engaging in surface bargaining where its offer merely reiterated existing practices and its first written counterproposal was not submitted until 3.5 months after it had been requested. *See also MacMillan Ringerfree Oil Co*., 160 NLRB 877 (1966), enf. denied on other grounds 394 F.2d 26 (9th Cir. 1968).

> Although an adamant insistence on a bargaining position is not of itself a refusal to bargain in good faith [citation omitted], other conduct has been held to be indicative of a lack of good faith. Such conduct includes delaying tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, failure to designate an agent with sufficient bargaining authority, withdrawal of already agreed-upon provisions, and arbitrary scheduling of meetings.

Atlanta Hilton & Tower, 271 NLRB 1600, 1603. (Footnote citations omitted.)

In *Stevens International*, 337 NLRB 143, 149–50 (2001), the Board found that the respondent did not engage in good-faith effects bargaining. Although the respondent met with the union and invited it to propose terms for a plant closing agreement, the Board found bad faith bargaining because the respondent summarily rejected the union's proposal without offering a counterproposal and failed to negotiate further, despite the union's offer to modify its proposal. *See also Dallas & Mavis Specialized Carrier Co*., 346 NLRB 253, 257 (2006) (finding no good-faith bargaining where the respondent listened and responded to the union's proposal regarding the effects of ceasing operations but then summarily rejected all but one of the union's proposals

without providing an explanation or counterproposal and did not respond when the union requested further bargaining).

The complaint also alleges that Respondent violated Section 8(a)(5) and (1) of the Act at various times from January 4, 2016 through February 22, 2017, when Respondent engaged in surface bargaining to frustrate or avoid mutual agreement by: (1) refusing to recognize and bargain with the Union causing delay in providing bargaining proposals from January 4 through May 23, 2016; (2) failing and refusing to furnish the Union with financial information since September 6, 2016; (3) failing to offer concrete and meaningful bargaining proposals to the Union on matters relating to wages and benefits, grievances and arbitration, just-cause protections from discipline or discharge, and an overly broad management rights clause that were either statutorily required or were heavily tipped to Respondent as part of its status quo ante position; and (4) bypassing the Union with an October 13 letter to employees and by informing Respondent employees in Philadelphia that it would be futile to elect a union when bargaining in Seattle had been at a stalemate. (GC Exh. 1(g) at 2–3.)

The General Counsel asserts that Respondent violated Section 8(a)(5) by coming to the bargaining table "with no intention of reaching an agreement, and it was simply continuing down its well-established path of refusing to recognize and bargain with the Union." (GC. Br., at 30.) While the duties imposed under Section 8(a)(5) of the Act do not obligate a party to make concessions or yield a position fairly maintained, it does require a serious intent to adjust differences and to reach an acceptable common ground, rather than merely going through the motions of bargaining. *Unbelievable, Inc. d/b/a Frontier Hotel & Casino*, 318 NLRB 857, 876 (1995), enfd. 118 F.3d 795 (D.C. Cir. 1997). Thus, negotiating as a kind of "sham" while intending to avoid an agreement amounts to bad faith bargaining in violation of Section 8(a)(5) of the Act and if a party to the bargaining process is unwilling to make any meaningful modifications of its principal proposals, in effect it is maintaining "an attitude of 'take it or leave it'" which the U.S. Supreme Court in the *NLRB v. Insurance Agents' International Union [Prudential Insurance Co. of America]*, 361 U.S. 477, 485 (1960), case condemned. *K Mart Corp.*, 242 NLRB 855, 875 (1979).

Applying these principles here, I find that the totality of Respondent's conduct amounted to bad faith bargaining as Respondent, among other things referenced herein, at all times from May 24, 2016 through February 22, 2017, refused to move past its initial status quo bargaining offer with the Union. Viewed in its entirety, the evidence shows that Respondent pursued tactics designed to delay and prolong negotiations while at the same time trying to undermine support for the Union.

1. Delay in providing meaningful bargaining proposals

As stated above, surface bargaining can be found where it is manifestly detrimental to the Union's preservation of employee support to delay the submission of proposals. *J. P. Stevens & Co.*, 239 NLRB 738, 765 (1978), enfd. in pert. part 623 F. 2d 322 (4th Cir. 1980). Thus, Respondent's delay in presenting meaningful counterproposals is a factor I have considered in finding bad faith. See *United Technologies Corp*., 296 NLRB 571 (1989)(Board found bad-faith bargaining where employer's failure to make an economic proposal after almost 1 year of bargaining found to be part of a pattern of delaying tactics).

First of all, the Board ruled in May 2017 that PSAV unlawfully failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit from January 4 through May 23, 2016. *The First PSAV case* at slip. op pp. 2–3. As a result, I take administrative notice that PSAV's past conduct involves its unlawful delay of bargaining with the Union here so, at stated above, PSAV comes before me here as a recidivist employer with a history of bad-faith bargaining with this Union. See *Langston Cos.*, 304 NLRB 1022 (1991) (Past conduct by an employer's president that occurred preelection used as a factor in a surface bargaining finding by the Board); see also *Unbelievable, Inc. d/b/a Frontier Hotel & Casino*, 318 NLRB supra at 857) (Same).

At the initial bargaining session on June 24, PSAV turned over its current wage information which has remained the status quo wages offered by PSAV with no change. Also on June 24, the Union presented its proposal for a first contract which was based on the Union typical scaffold agreement with no wage provisions yet and contained many different provisions from PSAV's employee handbook rules. On July 19, the Union provided PSAV its first wage proposal with its revised CBA proposal. On August 11, PSAV provided the Union with a proposed CBA that contained the status quo wages and benefits for unit employees. On August 18, the Union provided another counterproposal to PSAV with wage rate concessions from its July 19 proposal.

After making two unanswered wage counterproposals and as the Union waited for the September 2 requested financial information from PSAV to gauge the veracity of Shankman's August 17 statements as reduced to the Union's September 2 information request, PSAV continued to provide proposals after the August 18 session which made no material movement on economics, simply maintaining its initial unchanged status quo wage proposal and unilateral discretion within the classification wage ranges. (Tr. 113; Jt. Exhs. 11, 14, and 17.) In addition, as discussed below, PSAV also proposed retaining the pre-existing company practices which apply to all union and nonunion employees with respect to benefits. (See, e.g., Jt. Exh 6 at art. XVII; Jt. Exh. 17 at art. IX.)

I find it significant that by January 27, 2017, Respondent did not present any counterproposals on any key economic issues. Instead, it simply "rejected" the Union's proposals without sufficient explanation and said that anything outside the status quo wages would negatively impact PSAV's "business model." However, Respondent did not present any departure from the status quo wage proposal at any time through January 27, 2017 over more than 7 months of negotiations after receiving the Union's initial proposals in June 2016. In *Bewley Mills*, 111 NLRB 830, 831 (1955), the Board found a delay of "almost 7 weeks" in submitting counterproposals to be a factor indicative of bad faith. And in *J.P. Stevens & Co.*, 239 NLRB supra at 765, the Board noted that when "an employer takes 6 months or a year just to submit proposals, it can reasonably foresee the erosive effect . . . on a union's strength among the employee population . . . [and] strongly suggests that such an effect was deemed desirable." Given the circumstances of this case where more an a year from January 4, 2016 through at least January 27, 2017, the specific

unwillingness of Respondent to bargain regarding the above economic provisions and the provisions referenced below, and the unique history of Respondent's unlawful conduct against the Union, I find Respondent's dilatory tactics on presenting its initial counterproposals on the key economic provisions of wages and benefits is evidence of its bad faith.

In sum, I find that Respondent's bad faith was independently demonstrated by the totality of its conduct throughout negotiations with the Union. Specifically, Respondent negotiated with a predetermined rigid resolve not to budge from an initial status quo position. Respondent maintained throughout its original unchanged positions as to the key economic provisions involving wages and benefits. In these special circumstances, under which the Union typically obtains wage and benefits increases in its first CBA, I find Respondent's rigid "take-it-or-leave-it" position on wages and benefits was put forth in bad faith in an attempt to delay or frustrate bargaining.

2. Respondent never put forth any meaningful proposals that significantly changed from its initial status quo position on non-economic provisions

a. Bargaining regarding discipline and discharge provisions

As stated above, the Union's initial counterproposal in June to PSAV included a progressive discipline system and required that PSAV have "just cause" for discipline and discharge. (Tr. 81; Jt. Exh. 3.) PSAV responded by rejecting any "just cause" standard and, like all other subjects, simply proposed to maintain the status quo, rejecting both the progressive discipline system and "just cause" provision. (Tr. 94; Jt. Exh. 6.) The Union proposed a compromise in August which added a list of misconduct that would constitute grounds for immediate termination, but PSAV once again stubbornly maintained its status quo for this provision both at the August and September sessions. (Tr. 96-97, 108; Jt. Exh. 8.) Even when PSAV finally made a change to its disciplinary proposal later in January 2017, it was not a substantive change as PSAV retained unilateral discretion. (Tr. 113–114; Jt. Exh. 17.)

I find that Respondent failed to act in good faith when it negotiated the discipline and discharge provisions with the Union. Meanwhile, during this same timeframe, Respondent was encouraging PSAV's technician employees in Philadelphia to vote "no" to unionization using PSAV's deliberately-created Seattle stalemate as an explanation why it would be futile for Philadelphia employees to vote in a union and encouraging these employees to not join a union. Thus, I find that throughout negotiations, Respondent maintained a "take-it-or-leave it" attitude intending to deliberately draw out negotiations in hope the certification period would lapse or that the delay could get communicated by PSAV to other PSAV technicians in other regions as an example why unionizing would not benefit them.

b. Respondent's position on grievance and arbitration provision

PSAV also proposed a grievance and arbitration policy that placed numerous limitations on what could be grieved, excluding "any complaints related to . . . [a]ny discipline that does not involve the loss of time or pay;. . . a]ny employee grievance where there is no personal relief to the grievant;. . . [a]llegations of discrimination …; …[u]nfair labor practice charge[s]." (Jt. Exh 6. at Art. XIX.) PSAV also rejected the Union's proposal for a "final and binding" arbitration. Id. While PSAV appeared willing to consider arbitration, it rejected final and binding arbitration. (Tr. 108, 111-112; Jt. Exhs. 11, 14, and 17.)

As further evidence of bad faith, I find that Respondent's refusal to veer from its status quo language on grievance and arbitration proposals was intended to either purposely delay bargaining while a certification lapsed, to use as an example in Philadelphia and anywhere else a union vote was approaching to badmouth the Union in Seattle, or were otherwise advanced to "make concessions here and there . . . to conceal a purposeful strategy to make bargaining futile or fail." See *NLRB v. Herman Sausage Co.*, 122 NLRB 168 (1958), enfd. 275 F.2d 229, 232 (5th Cir. 1960)(Board found as evidence of bad faith against employer, its unwillingness to accept or consider any contract other than its proposed contract).

c. Respondent's management rights provision

PSAV also refused to move from its initial proposal to maintain an expansive management rights clause as part of its initial proposal to the Union in August. (Tr. 149; Compare Jt. Exhs. 5–6 with Jt. Exh. 11 at art. II, with Jt. Exh. 14 at art. II, and Jt. Exh. 17 at Art. II.) Under this proposal, PSAV would retain the sole right to determine terms and conditions of employment such as discipline and subcontracting.

Finally, four of the tentative agreements reached between the parties on various provisions involve the *Union's* compromise and agreement to withdraw proposals that would have changed the Respondent's status quo provisions while others merely incorporated into the CBA rights that employees were granted through statute. See Jt. Exh. 17 at 30.

I find that Respondent failed to act in good faith when it negotiated the management-rights provision with the Union. In summary, I find that PSAV acted unreasonably extreme or harsh with all of its proposals which I find to be further evidence that PSAV was offering them lacking serious intent to compromise with the Union and this is further proof of PSAV's failure to bargain in good faith because PSAV failed to budge from its status quo positions

3. Respondent's bypassing the Union with Its October 13 letter and CEO McIlwain's February 2017 statements to Philadelphia employees are further evidence of Respondent's lack of good faith

Shankman sent an October 13 letter to the Union bargaining team but he also sent it to the entire technicians' bargaining unit, which disputes the basis of the Union's wage proposals and explicitly states that PSAV will not agree to the proposals, whether on wages or scheduling, and that PSAV is not "required to deviate from the business model that works throughout the Company." (Tr. 107; Jt. Exh. 13.) I find that this October 13 letter directly to Respondent's technicians' unit, was sent in bad faith by Attorney Shankman as it injures the Union's status as exclusive bargaining representative and PSAV's failure to accord the Union its rightful role in the establishment of

new wages, the subject of the letter, necessarily tended to undermine the Union's authority among the employees whose interests it represented. See *C&C Plywood Corp*., 163 NLRB 1022, 1024 (1967) (Real injury from bypassing the union is not flowing from breach of contract but from injury to the union's status as bargaining representative.)

Also as stated above, on February 16, 2017, before a union election vote in Philadelphia, Pennsylvania, PSAV held a mandatory meeting in Philadelphia with 60 or so technician employees, during which PSAV's CEO McIlwain spoke upper management of PSAV spoke and presented a PowerPoint presentation to employees, which made the statement that, "Collective bargaining does not always result in an agreement . . . . PSAV will not enter into an agreement that would negatively impact our business model." (Tr. 59–60; R. Exh. 3 at 10.) In his oral presentation, McIlwain further painted a dismal picture of what was going on with PSAV's negotiations with the Union in Seattle and McIlwain stated that "things aren't going well with the negotiations in Seattle, so they could very well go the same way in Philadelphia," and referenced the negotiations being "drag[ged] out and nothing happening." Id. I find that CEO McIlwain was trying to get the Philadelphia technicians to use PSAV's bad faith conduct creating the Seattle stalemate as a warning that employees should vote "no" in the next day's representative election and that it would be futile to vote a union in. (Tr. 59–60, 62–64.)

In *Langston Companies*, 304 NLRB 1022 (1991), the Board considered the employer's president's preelection statements to employees that "it might take 8 to 10 years for [the union] to get a contract" as a threat that, tied to the employer's other actions at the bargaining table, amounted to bad faith bargaining. The president's statements occurred preelection and the Board held that the employer's past conduct reveals surface bargaining. Id. In *Western Summit Flexible Packaging*, 310 NLRB 45 (1993), the Board found that an employer's owner's antiunion statements together with the employer's insistence on a broad management-rights clause and employment-at-will language evidenced the employer's bad faith.

Here, PSAV's CEO McIlwain's PowerPoint presentation, his antiunion message to vote "no" in the election, and his preelection message to Philadelphia employees that it would be futile to vote for the union given the bargaining session stalemate with the Seattle Union employees created by PSAV in bad faith also adds another bad faith bargaining factor as evidence of PSAV's failure to bargain in good faith with the Union.

Based upon the foregoing, the totality of the circumstances show that Respondent engaged in bargaining without a good-faith intent to resolve differences and reach common ground in violation of Section 8(a)(5) and (1) of the Act.[25]

CONCLUSIONS OF LAW

1. The Respondent, Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party International Alliance of Theatrical Stage Employees, Local 15 (Union) is a labor organization with the meaning of Section 2(5) of the Act.

3. At all material times the Union has been the designated exclusive collective-bargaining representative of the following bargaining units of the Respondent's employees:

> All full-time and regular part-time technicians, including entry level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with Respondent, and guards and supervisors as defined by the Act.

4. By failing and refusing, since about September 6, 2016, to furnish the Union with the requested information, described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

5. By failing and refusing to bargain in good faith with the Union from May 24, 2016, through February 22, 2017, the Respondent violated Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

7. I recommend dismissing the complaint allegations that are not addressed in the Conclusions of Law set forth above.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices and has violated Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist, to recognize and bargain on request with the Union and, to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall provide the Union with the information that it has to date failed and refused to provide that was requested by the Union in its September 2, 2016 information request to the Respondent, as described in this decision.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, I shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union and furnishes the Union with the information that was requested by the Union in its September 2, 2016 information request to the Respondent, as described in this decision. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

The Respondent shall also post the notice in accord with *J.*

[25] I do not find that any of the individual acts set forth in this section, standing on their own, are unlawful in and of themselves. Instead, Respondent's conduct as a whole, supports a finding that it was not bargaining in overall good faith and therefore constitutes a violation of Sec. 8(a)(5) and (1) of the Act. See *Universal Fuel, Inc.*, 358 NLRB 1504, 1504 (2012) (Same).

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. at 13.

In addition, a public reading of my remedial notice is appropriate here. The Respondent's violations of the Act are sufficiently serious and Respondent is a recidivist Act violator that the reading of the notice is necessary to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices, and to enable employees to exercise their Section 7 rights free of coercion. See, e.g., *The Sheraton Anchorage,* 363 NLRB No. 6, slip op. at 2 (2015); *Carey Salt Co*., 360 NLRB 201, 202 (2014); *HTH Corp*., 356 NLRB 1397, 1403 (2011), enfd. 693 F.3d 1051 (9th Cir. 2012); *Homer D. Bronson Co*., 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed.Appx. 32 (2d Cir. 2008). Therefore, I will require that the remedial notice be read aloud to the Respondent's employees at each of Respondent's Seattle Area and Philadelphia facilities by CEO McIlwain (or, if he is no longer employed by the Respondent, the current senior vice president of Human Relations) in the presence of a Board agent or, at the Respondent's option, by a Board agent in that official's presence.

On these findings of fact and conclusions of law and on the entire record, pursuant to Section 10(c) of the Act, I issue the following recommended[26]

ORDER

The Respondent, Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services, doing business in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, and Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and Refusing to bargain collectively and in good faith with the International Alliance of Theatrical and Stage Employees, Local 15 concerning the wages, hours, and other terms and conditions of employment in the following unit:

> All full-time and regular part-time technicians, including entry level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with Respondent, and guards and supervisors as defined by the Act.

(b) Failing and refusing to bargain collectively with the International Alliance of Theatrical and Stage Employees, Local 15, by failing to provide information requested by the Union that is necessary and relevant for the Union's performance of its duties as the collective bargaining representative of the employees in the unit.

(c) 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) On request, bargain with the Union as the exclusive collective bargaining representative of the employees in the following appropriate unit on terms and conditions of employment for the period required by *Mar-Jac Poultry*, 136 NLRB 785 (1962),[27] and if an understanding is reached, embody the understanding in a signed agreement.

> All full-time and regular part-time technicians, including entry level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with Respondent, and guards and supervisors as defined by the Act.

(b) Within 14 days, provide the Union with financial information responsive to the 4 bullet points contained in Union's September 2, 2016, information request.

(c) Within 14 days of service by the Region, have its representative read the attached notice to employees during work time, in the presence of a Board Agent. Alternatively, within 14 days of service by the Region, have a Board Agent read the attached notice to employees during work time, in the presence of Respondent's representatives. The attached remedial notice shall be read aloud to the Respondent's employees at each of Respondent's Seattle Area and Philadelphia facilities by CEO McIlwain (or, if he is no longer employed by the Respondent, the current senior vice president of Human Relations) in the presence of a Board agent or, at the Respondent's option, by a Board agent in that official's presence.

(d) Within 14 days after service by the Region, post at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, and Philadelphia, Pennsylvania facilities, copies of the attached notice marked Appendix.[28] 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

[26] 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.

[27] While it is recognized that the Board previously extended the Union's certification year under Mar-Jac Poultry in PSAV Presentation Services, 365 NLRB No. 84 (May 19, 2017), as Respondent has not complied with the Board's Order to bargain in good faith, it is also included in this Order.

[28] 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."

covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent.

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

Dated, Washington, D.C., April 6, 2018

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 a representative to bargain with us on your behalf;

Act together with other employees for your benefit and protection;

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights. International Alliance of Theatrical and Stage Employees, Local 15 (Union) is our employees' representative in dealing with us regarding wages, hours and other working conditions for the following unit (Unit):

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by us at our Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with us, and guards and supervisors as defined by the Act.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective bargaining representative of our Unit employees.

WE WILL NOT fail and refuse to provide information requested by the Union that is relevant and necessary to its role as your exclusive collective-bargaining representative.

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

WE WILL, upon request, bargain in good faith with the Union as your exclusive collective-bargaining representative.

WE WILL, promptly furnish to the Union with the information requested on September 2, 2016, related to bargaining over wages for the years September 1, 2015, to the present.

AUDIO VISUAL SERVICES GROUP, INC., A DELAWARE CORPORATION, D/B/A PSAV PRESENTATION

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/19-CA-186007 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.