General Drivers, Warehousemen & Helpers Local Union No. 89 (Affiliated with the International Brotherhood of Teamsters) *and* Jack Cooper Holdings d/b/a Jack Cooper Transport Co. Case 09–CB–157269

December 15, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On February 6, 2017, Administrative Law Judge Donna N. Dawson issued the attached decision. The Respondent Union filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, a supporting brief, and an answering 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 and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified and set forth in full below.[3]

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[1] 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.

In his answering brief, the General Counsel requests that the Board deny the Respondent's exceptions because its supporting brief does not individually reference any of the exceptions as required by Sec. 102.46(a)(2) of the Board's Rules and Regulations, leaving the General Counsel to guess as to the reasons for the Respondent's exceptions. Although the Respondent's brief does not conform in all respects with the Rules' requirements, we find that it is not so deficient as to warrant striking it and denying the Respondent's exceptions. Furthermore, it appears that the General Counsel was not prejudiced by the Respondent's failure to comply with that section since he filed an answering brief addressing the issues sought to be raised by the exceptions and brief. Accordingly, we deny the General Counsel's request.

[2] We have amended the judge's Conclusions of Law to correct the judge's inadvertent reference to an 8(a)(5) and (1) violation, instead of Sec. 8(b)(3) as alleged in the complaint, and to conform to the violations the judge found. We have similarly substituted Sec. 8(b)(3) for Sec. 8(a)(5) and (1) elsewhere in the judge's decision.

[3] We shall modify the judge's recommended Order to conform to her unfair labor practice findings and to the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

Chairman Miscimarra observes that no party urges the Board to defer the unfair labor practice allegations in this case to the parties' contractual grievance and arbitration procedures. In a related case, *Jack Cooper Holdings Corp. d/b/a Jack Cooper Transport Co.*, 365 NLRB No. 163 (2017), Jack Cooper Holdings urged the Board to defer to the parties' contractual grievance and arbitration procedures complaint allegations that it violated Sec. 8(a)(5) of the Act by refusing the Union's requests to furnish certain information. In his dissent in *Jack Cooper Holdings*, Chairman Miscimarra would have overruled the Board's per se rule against deferring information-request cases to negotiated procedures and remanded that case to the judge to analyze whether deferral there was appropriate. Because no party urges deferral here, Chairman Miscimarra reaches the merits of the unfair labor practice allegations.

1. We find no merit to the Respondent's claim that *Raley's Supermarkets & Drug Centers*, 349 NLRB 26 (2007), precludes us from affirming the judge's finding that the Respondent unlawfully delayed furnishing information to the Company because the complaint did not specifically allege such a violation. *Raley's* did not stand for the broad proposition that the Board is precluded from finding an unlawful delay in providing information unless the complaint contains a specific "delay" allegation. Rather, *Raley's* addressed a narrow subset of cases where the requested information does not exist, and it merely held that where a complaint alleges that a respondent violated the Act by refusing to furnish specific information that exists, the Board is precluded from "convert[ing] this allegation into its opposite" and finding that the respondent violated the Act by failing to timely inform the requesting party that the information does not exist. See id. at 28.

Nor, contrary to Respondent's claim, does *Raley's* preclude us from affirming the judge's additional finding that the Respondent failed to timely notify the Company that certain other requested information did not exist. As the General Counsel notes in his answering brief, the Board overruled *Raley's* in *Graymont PA, Inc.*, 364 NLRB No. 37, slip op. 1, 6–7 (2016), enf. denied on other grounds Nos. 16-1249 & 16-1288 (D.C. Cir. March 3, 2017), and held that it would apply the traditional *Pergament*[4] test in deciding whether it may consider an unalleged failure to timely disclose that requested information does not exist.

Applying that test, we conclude that the Respondent's due process rights are not violated by finding that it unlawfully failed to timely furnish certain requested information and inform the Company that other requested information did not exist. First, both findings were closely connected to the complaint allegation that the Respondent failed to furnish the Company with the information it had requested on March 13 and April 10, 2015. Thus, the alleged failure to furnish information

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[4] See *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989) (Board may find a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated), enfd. 920 F.2d 130 (2d Cir. 1990).

and the unalleged failure to timely furnish other information and inform the Company that certain information did not exist involve the same evidentiary facts: namely, the Company's requests for information and the Respondent's response to those requests. They also present the same ultimate issue: whether the Respondent's response satisfied its statutory obligation to bargain collectively and in good faith with the Company. Indeed, the Respondent demonstrated the close connection between these issues by stating in its opening statement that it "has no more documents in its possession to further satisfy any other requests," and by eliciting testimony about why it delayed providing certain information. See *Graymont PA, Inc.*, supra, at slip op. 7 (respondent's failure to timely disclose that requested information did not exist was closely connected to complaint allegation that respondent failed to timely furnish requested information as they involve the same evidentiary facts and present the same ultimate issue, and respondent's opening statement—to the effect that it had no responsive information—demonstrated the close connection).

Second, the issues were fully litigated. The Respondent did not object when the General Counsel elicited testimony that it was not until April 27, 2015, that the Respondent informed the Company that it had provided all documents in its possession. The Respondent had the opportunity to question the witness after he provided that evidence. Further, the Respondent itself elicited testimony to explain why it delayed furnishing other information to the Company. See *Casino Ready Mix, Inc. v. NLRB*, 321 F.3d 1190, 1200 (D.C. Cir. 2003) (respondent had the opportunity to fully litigate the unalleged violation where it did not object to the evidence establishing the unalleged violation and had the opportunity to cross-examine the witness about the evidence); *Park 'N Fly, Inc.*, 349 NLRB 132, 133 (2007) (same). Notably, the judge stated—before the Respondent began presenting its case—that the Respondent not only had a duty to provide relevant information, it had a duty to provide it in a timely manner, and that "[i]f you don't have the information, the law says that you say I don't have the information . . . if you don't have [the requested documents], you say you don't have them, and you do it in a timely manner. Okay? *Again, that's what this case is about*" (emphasis added). In these circumstances, any claim that the Respondent would have altered the conduct of its case at the hearing if only the General Counsel had included the more specific allegations in the complaint is untenable.[5]

2. As for the merits of the judge's findings that the Respondent unlawfully delayed in responding to the information requests, we note that when faced with a request for relevant information, a party is required to make a reasonable good faith effort to respond to the request as promptly as the circumstances allow. *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. 394 F.3d 233 (4th Cir. 2005). In determining whether a party has failed to furnish information in a timely manner, the Board considers a variety of factors, including the nature of the information sought (including whether the requested information is time sensitive); the difficulty in obtaining it (including the complexity and extent of the requested information); the amount of time the party takes to provide it; the reasons for the delay in providing it; and whether the party contemporaneously communicates these reasons to the requesting party. Id. at 587 & fn. 6, 588 & fn. 9. See also *Postal Service*, 308 NLRB 547, 551 (1992); *Valley Inventory Service, Inc.*, 295 NLRB 1163, 1166 (1989).

Applying these factors, we affirm the judge's unlawful delay findings. Here, the National Master Agreement provides that parties shall respond to information requests relating to work preservation grievances within 15 days, presumably because of the time-sensitive nature of such matters. Not surprisingly, the record shows that the Company asked the Respondent to furnish the requested information within 15 days, just as the Respondent had asked the Company to furnish the Respondent—within 15 days—information relating to the same grievance. Given that the Respondent had told the Company that it had done "quite a bit of research" on the matter prior to the Company's information requests, it is reasonable to conclude that it would not have been difficult or time consuming for the Respondent to retrieve and furnish the information that did exist and to ascertain which requested information did not exist and to so inform the Compa-

[5] Chairman Miscimarra finds that a best practice would be to specifically plead in a complaint, as appropriate, that a respondent violated Sec. 8(b)(3) or Sec. 8(a)(5) of the Act by refusing to furnish requested information, by unreasonably delaying in furnishing requested information, or by failing to promptly inform the employer or the union, as the case may be, that requested information does not exist.

Chairman Miscimarra further finds it unnecessary to pass on whether the majority in *Graymont PA*, 364 NLRB No. 37 (2016), correctly overruled *Raley's Supermarkets & Drug Centers*, 349 NLRB 26 (2007), to the extent that *Raley's Supermarkets* precluded the Board from considering an unalleged failure to timely disclose that requested information does not exist even when the unalleged issue is closely connected to the subject matter of the complaint and has been fully litigated. Here, the Company specifically asked the Union to "identify any information that is *not* available and provide an explanation as to why said information is not available" (emphasis added). Accordingly, the Respondent's refusal to promptly inform the Company that certain information did not exist constituted a failure to timely furnish requested information. Consequently, the complaint's failure to separately allege an unlawful delay in apprising the Company that certain information does not exist did not deprive the Respondent of due process.

ny. The Respondent does not offer any explanation why it took so long to raise its nonmeritorious claim that disclosure of witness names would subject them to retaliation or its claim that it had furnished all documents in its possession. See, e.g., *Postal Service*, 308 NLRB at 551 (4-week unexplained delay unlawful where information was not shown to be difficult to retrieve).

Accordingly, we find that the Respondent violated Section 8(b)(3) in failing to provide requested information and delaying in providing responses to the Company's information requests.

AMENDED CONCLUSION OF LAW

Substitute the following for Conclusion of Law 4.

"4. By refusing to provide relevant information and delaying in providing responses to the Company's March 13, 2015 requests for information and April 10 renewed requests, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) of the Act."

ORDER

The Union, General Drivers, Warehousemen and Helpers Local Union 89 (a/w The International Brotherhood of Teamsters), its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain with the Company by refusing to furnish to the Company relevant requested information.

(b) Refusing to bargain with the Company by unreasonably delaying in providing responses to requests for relevant information.

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

(a) Furnish to the Company in a timely manner the information requested by the Company on March 13 and April 10, 2015 (i.e., requests 4, 7, 9, 10, 13, 14, 15, and 17), except for the information requiring the Union to provide admissions that they did not have any evidence that the Company had diverted union work.

(b) Within 14 days after service by Region 9, post at its business offices and meeting halls in Kansas City, Missouri and Louisville, Kentucky, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 9, 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 and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Union customarily communicates with its member 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.

(c) Within 14 days from the date of this order, sign and return to the Regional Director for Region 9 sufficient copies of the Notice for posting by the Company, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Union has taken to comply.

Dated, Washington, D.C. December 15, 2017

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Philip A. Miscimarra, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
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 on your behalf with your employer

Act together with other employees for your benefit and protection

[6] 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."

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Jack Cooper Holdings d/b/a Jack Cooper Transport Co. by refusing to furnish it with relevant requested information or by unreasonably delaying in providing responses to requests for relevant information.

WE WILL furnish to Jack Cooper Holdings d/b/a Jack Cooper Transport Co. in a timely manner the information it requested on March 13, 2015, and on April 10, 2015, regarding requests 4, 7, 9, 10, 13, 14, 15, and 17 (except for requests for admissions that we did not have any evidence to support our grievance).

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION 89 (A/W THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS)

The Board's decision can be found at www.nlrb.gov/case/09-CB-157269 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.

Patrice Tisdale, Esq. and *Naima Clarke, Esq.,* for the General Counsel.

David O. Suetholz, Esq., for the Respondent.

Kenneth W. Zatkoff, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

DONNA N. DAWSON, Administrative Law Judge. This case was tried in Louisville, Kentucky, on March 31, 2016. The Charging Party, Jack Cooper Holdings d/b/a Jack Cooper Transport Co. (the Company) filed the charge on August 3, 2015,[1] and the General Counsel issued the complaint on November 30. The complaint alleges that General Drivers, Warehousemen & Helpers Local Union No. 89 (the Respondent/Union) violated Section 8(b)(3) of the National Labor Relations Act (the Act) by failing and refusing to provide requested, relevant information to the Company. (GC Exh. 1(c).)

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation with facilities located in Kansas City, Missouri and Louisville, Kentucky, is engaged in the interstate transportation of automobiles (also referred to as "carhaul"). Annually, it derives gross revenue in excess of $50,000 for the transportation of interstate freight in and between various states in the United States.

The parties have stipulated, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties have also admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The Company is a trucking company that transports automobiles throughout the United States. Curtis Goodwin (Goodwin), senior vice president, handles labor relations.

The Parties are signatories to the National Master Automobile Transporters Agreement (NMATA). The NMATA, under Article 33, includes a Work Preservation Agreement (WPA), which contractually limits signatory employers from diverting or transferring any carhaul or transport work to nonunion entities or carriers. (GC Exh. 3.) In addition, Article 33, section 3 of the NMATA sets forth the procedure for an expedited grievance and arbitration procedure for alleged violations of this provision. That process requires that the parties hold a local level hearing (LLH) within 15 days from the date of the employer's receipt of the grievance.

JC Holdings is also parent company to controlled affiliate/subsidiary, Jack Cooper Logistics (JC Logistics). JC Logistics operates as a nonunion broker company that has, for periods relevant to this case, solicited and obtained carhaul traffic, and offered and/or bid it out to automobile transport carriers.

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

> [A]ll employees in the classification of work covered by the National Master Automobile Transporters Agreement, effective June 1, 2011 to August 31, 2015, and Supplements thereto, but excluding supervisory, managerial, guard and confidential employees.

(GC Exh. 1(c), para. 7; GC Exh. 3.) At all material times, the Company has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in the collective-bargaining agreements. Fred Zuckerman (Zuckerman) is the president of Local 89, and its agent within the meaning of Section 2(13) of the Act.

B. The Underlying Dispute

This case arose out of a grievance filed on February 11 by

[1] All dates are in 2015 unless otherwise indicated.

the Union against the Company for violating the WPA in Article 33 of the NMATA. (GC Exh. 2.) In that grievance, the Union claimed that the Company, through its affiliate JC Logistics,

> [H]as diverted bargaining unit work currently performed by bargaining unit employees domiciled in Bowling Green, Warren County, Kentucky and the surrounding geographic area and is otherwise currently diverting bargaining unit work covered under the NMATA. The bargaining unit work consists of hauling vehicles from terminals in Louisville/Jefferson County Kentucky and the surrounding area and other areas covered by the NMATA and Central-Southern and Eastern Supplements.

(Id.) The grievance alleged that the underlying incident occurred on January 14 "via Auction to Auction Vehicle Transit Order from Manheim, New Jersey," and requested that a LLH be held within 15 days of the grievance, pursuant to Article 33, section 3(a)(3)(i), and that JC Holdings "cease and desist diverting bargaining unit work to its controlled affiliate [JC Logistics] under the NMATA." (Id.)

Pursuant to NMATA Article 33, section 3 grievance procedures, the parties participated in a telephonic LLH on February 27. Goodwin represented the Company. Zuckerman, David Suetholz (counsel), Avral Thompson (business agent) and Robert Colone represented the Union. (GC Exhs. 10 and 11.)

During the LLH, Zuckerman, clarified the substance of the grievance allegations. He explained that in January, one of the Local 89 members alerted the Union that at the Manheim Auto Auction near Bordentown, New Jersey, JC Logistics had diverted union work to a nonunion carrier, Virginia Auto Transport. That employee also complained that in doing so, JC Logistics had cut the pay rate for his load down to the Virginia Auto Transport rate. Goodwin explained that JC Logistics obtained loads from various places, with different rates. Zuckerman asserted that the Union's investigation of the incident resulted in a finding that JC Logistics had been diverting bargaining unit work to nonunion carriers in violation of the WPA. (GC Exh. 10; Tr. Exh. 34–35.) Specifically, Zuckerman maintained that,

> Now in doing quite a bit of research on this, we understand that Logistics has got probably a dozen or so places around the country—Detroit Metro is one of them and I contacted some people at Detroit Metro, and the way it works up there now is that Logistics is operating an office up there. Our guys get dispatched – the Cooper Transport guys get dispatched, but then they have to check in with the Logistics office first, and they may change [their] loads at that time.
>
> They may give them different loads at that time, and take their loads and give them to nonunion competitors is what those drivers up there are telling me, and now because the Company is not backhauling, Logistics is giving nonunion work – or nonunion carriers work out of Detroit Metro and make our guys deadhead home, which if they're giving it to nonunion carriers, they're also violating the agreement. So that's the basis of the complaint is that Logistics is obtaining this carhaul traffic, and they are dolling it out to nonunion carriers.

(GC Exh. 10, pp. 3–4.)

Finally, Zuckerman confirmed that the grievance was not about the rate dispute, but about JC Logistics diverting union work to nonunion carriers across the country—in other words, not just in Bordentown, New Jersey, but in Detroit Metro and other areas. This is quite evident from the following LLH conversation:

> MR. GOODWIN: So Fred [Zuckerman], once again to be sure I'm clear. Basically this is about – is it about – is it about – I guess it's just sort of like a blanket grievance right. It's not just about the locations you mentioned, it's about anywhere we pick up used cars.
>
> MR. ZUCKERMAN: Yes, specifically it was – when it came to our attention was the situation in Bordentown, and then when we got looking into it, it became much broader than that, and still all a violation in our opinion. So yes, it's about the diversion of carhaul work to nonunion carriers, yeah.
>
> MR. GOODWIN: Yeah, ok, you know what I don't think I have anything else. So this has nothing to do with the rates that the drivers get and those kind of things, this is just –
>
> MR. ZUCKERMAN: No, that wouldn't be an Article 33 grievance, I mean that would be just a regular claim under the contract.

(GC Exh. 10, pp. 13–14; Tr. 158.)

In addition, Zuckerman pointed out that Article 33 required the parties to notify the co-chairpersons of the local level of the grievance and provide them with their position statements. However, referring to the Union's pending information requests (to the Company), he asked "[c]ould we agree . . . not to do that [move towards that next step in the grievance/arbitration process] until we get the information?" Goodwin agreed, and Zuckerman said that "[o]nce we get the information, we'll take a look at it and then we'll figure out what the timelines going to be."[2] (GC Exh. 10, p. 12.)

C. The Company's Request for Information

On March 13, Goodwin, sent Zuckerman a written request, asking that the Union furnish it with certain information within 15 days. There were 17 requests for information, but the complaint only alleged violations in connection with numbers 4, 7, 9, 10, 13, 14, 15, and 17, as follows:

> 4. Provide all details of the alleged rate dispute brought to the Union's attention, on or about January 15, 2015 which gave rise to the Union's allegation of a violation of Article 33 and the WPA, including date of alleged rate dispute, names of all Jack Cooper drivers involved, specific details of loads involved including locations, rate of pay, delivery locations of

[2] I note here that the General Counsel also filed a complaint based on the Company's failure to ultimately respond to the Union's requests for information. On January 27, 2016, Administrative Law Judge Melissa Olivero found that the Company violated the Act when it failed and refused to provide information to the Union. (Case No. 09–CA–150482 is pending before the Board).

said loads, and name of any non-union entities involved.

7. Please provide a complete copy of the Union's claimed investigation which led it to conclude that Jack Cooper Logistics, LLC was diverting car haul work to a non-union carrier, including any and all statements obtained, written or otherwise, any and all documents obtained or received including load sheets, reports, pay sheets, dispatch records, logs, assignments, transit orders, grievances, and email correspondence or other electronic forms of communication. Also provide names and contact information for all persons contacted, talked to or interviewed by Local 89 and the sum and substance of the information obtained from each individual.

. . . .

9. Provide the names and contact information for all persons contacted and/or interviewed by Local 89 at Detroit Metro as part of its investigation of Jack Cooper Logistics, LLC including the date of such contact and/or interview.

10. Provide a copy of any notes, written statements, recordings or other documents obtained from the persons identified in Paragraph 8 above. If no such documents exist, provide a detailed summary of the information obtained from each individual identified in Paragraph 8 above.

. . . .

13. Provide evidence that Jack Cooper Logistics, LLC changed loads for Jack Cooper drivers including date, location, loads involved, delivery points for said loads, rates of pay for said loads, name of driver involved, name of any non-union entity involved, copy of any grievance filed and driver logs.

14. Provide evidence that Jack Cooper Logistics, LLC took a load or loads away from Jack Cooper Transport drivers and gave same to a non-union entity including date of occurrence, location of occurrence, driver involved, loads involved, name of non-union entity, delivery points for loads involved, pay rates for loads involved, copy of any grievance filed, driver logs and any other information in support of the Union's allegation.

15. Provide any and all evidence to support Local 89's claim that Jack Cooper Logistics, LLC gave work to non-union entities and made Jack Cooper drivers deadhead home empty including date of occurrence, location of occurrence, name and contact information of driver, load involved, delivery point of load, pay rate of load, non-union entity involved, copy of grievance, driver logs, and any other information within Local 89's possession.

. . . .

17. For each type of traffic identified in Paragraph 15 above, please provide the following: date of diversion, location where diversion took place, name of Jack Cooper Transport driver or other bargaining unit driver involved, non-union entity involved, load(s) involved including destination and pay rates, copies of any grievances, copies of drivers logs, and any other evidence within Local 89's possession or knowledge.

(GC Exh. 4.)

On March 26, Zuckerman responded to Goodwin's requests for information, in relevant part, as follows:

4) Bargaining unit member Rick Nicolson was upset that his rate had been cut out of Manheim, New Jersey. When he asked to see the load he was given in Manheim, New Jersey, the security guard told him that it was not his load that it belonged to Virginia Auto Transport. Nicholson then told his Union steward and business agent Avral Thompson about his concern;

. . . .

7) The Union objects to this request to the extent that it is covered by attorney client privilege. However, without waiving said objection, see attached documents;

. . . .

9) The Union objects to the relevance of this request and requests a justification for the requested information.

10) The Union objects to this request to the extent that it is covered by attorney client privilege. However, without waiving said objection, see attached documents;

. . . .

13) The Union objects to the relevance of this request.

14) The Union will provide documents responsive to this request as soon as it receives them from the employer.

15) The Union is unable to satisfy this request at this time because it has not received the requested vehicle transit orders from Manheim, New Jersey.

. . . .

17) The Union will supply the requested information once it receives it from the employer.

(GC Exh. 5.) On a subsequent date, the Union provided the referenced attached documents, consisting of two "Auction to Auction Vehicle Transit Orders," State of Delaware UCC filing history for JC Logistics and results of the Union's nationwide business public records search for JC Logistics. (GC Exh. 5, attachments.)

Dissatisfied with those responses, the Company renewed its request for information on April 10. Goodwin set forth the reasons why he believed the Union's March 26 responses were "extremely deficient," and "a deliberate attempt on the part of Local 89 to provide false or misleading information designed to subvert the information gathering process." Goodwin explained that he requested the information based on Zuckerman's representations at the LLH that the Union had investigat-

ed "quite a bit," which led to its conclusion that the Company had been diverting car haul work to nonunion carriers. (GC Exh. 6.) More specifically, Goodwin stated that the response to #4 lacked information about details of the loads involved, including "locations, rate of pay and delivery locations of said loads." Goodwin also amended his request to include:

> [D]ate bargaining unit member Rick Nicholson spoke to Business Agent Avral Thompson; any written notes of Business Agent Avral Thompson's discussion with Nicholson; any written statements by Nicholson; time of discussion with security guard; name of security guard; phone records to verify said discussions; and names of any and all individuals Mr. Thompson discussed this matter with after speaking with Nicholson.

(Id.) In relation to #7, Goodwin refuted the Union's assertion of the attorney client privilege, and maintained that, "Local 89 made it clear during the local level hearing that it conducted an investigation which led it to conclude there was a violation of the WPA," and that "[s]aid investigation is clearly discoverable and relevant." (Id.) Goodwin also found fault with the documents provided in that they were public records of corporate filings and nonresponsive.

Goodwin said that request #9 was relevant because Zuckerman represented that the Union had contacted and/or interviewed Detroit Metro employees as part of its investigation. He reiterated that the Company required this information "in order to conduct their own investigation as to the accuracy of the representations made by Local 89 and for purposes of identifying other relevant information." (Id.) Next, Goodwin renewed and modified request #10 to ask that if no such documents exist, the Union "provide a detailed summary of the information obtained from each individual identified in paragraph 9 above." Goodwin also requested an explanation for the Union's attorney client privilege claim. (Id.)

Regarding 13, 14, and 15, Goodwin clarified that information about JC Logistics changing loads was relevant due to the Union's LLH claim that it had done so in violation of the WPA. In addition, Goodwin rejected the Union's answer that it would only provide the information requested in #14 and #15 when it received it from the employer. He insisted that such response "makes clear that Local 89 has falsely accused the Employer of committing acts which have no basis in fact," and renewed and modified these requests to include "a request for admission by Local 89 that it has/had no such evidence to justify its grievance." (Id.)

Subsequent to April 10, Goodwin received what he believed to be the Union's response to his April 10 renewed requests. This consisted of the same March 26 responses with a date stamped in April 2015. Consequently, on April 27, Goodwin sent a letter to the Union, admonishing it for merely resending its initial response. (GC Exhs. 8, 7.) Goodwin wrote that, ". . . Local 89 is deliberately subverting the information gathering process which is not only a violation of the NLRA but a clear violation of the express terms of the [NMATA]." In turn, Goodwin resent the Company's April 10 renewed information requests to the Union. (GC Exh. 8.) He could not, however, say for sure that the duplicate responses came from the Union. Zuckerman denied sending the same March 26 letter in response to the Company's renewed requests. Instead, he testified that the Union resent the March 26 letter on about March 31, along with attached documents that were inadvertently omitted from the initial responses. (Tr. 175–176.)[3] Nevertheless, there is no dispute that the Union chose not to respond to the renewed requests.

In fact, Zuckerman agreed that the Union simply ignored the April 10 renewed requests because he believed that the Company was just "messing" with the Union by asking for the same information that the Union had asked the Company for. He testified that:

> [W]e did not respond to - - my attorney did respond to their April 27. I got frustrated during the process because we were getting nowhere, so two things happened after March 26. I told my attorney to file an unfair labor practice and to respond to them, and that's what we did. We figured that we could take care of it by filing the unfair labor practice because we were getting nowhere . . . they were just messing with us.

(Tr. 177.) He also responded that, "[i]f we didn't respond to it, we didn't respond to it." (Tr. 178.)

On April 27, the Union's attorney, David Suetholz (Suetholz), wrote to Goodwin, in relevant part, that:

> To date, the Union has been completely forthright by answering your questions at the local level hearing and has provided every document obtained at this point in the Union's investigation of your company's violation. To the extent that you have requested information that is unknown to President Zuckerman, such as approximate dates when he became aware of certain entities or practices, the Union simply cannot and will not fabricate a response. Questions seeking to ascertain the names of drivers in other locations who have provided information relevant to this grievance will not be answered unless compelled by a neutral arbitrator because of the serious concern of retaliation against these individuals. The Union has provided you with the names of its own members because the Local is confident of its ability to protect the rights of its members under the Agreement.

(GC Exh. 9.) Suetholz made no mention of the April 10 renewed requests. Nor did he explain or provide justification for the Union's assertion of the attorney-client privilege, or insistence that certain requests were irrelevant. Instead, he mentioned for the first time that the Union would not furnish names of drivers in other locations due to the potential for retaliation against them, and that the Union had provided all other information obtained in its investigation.

[3] The Company received those documents between March 26 and April 10. (Tr. 176.)

D. Testimony and Credibility Findings[4]

I credit Goodwin's straight forward and believable testimony regarding the reasons for each request. It was consistent with his written explanations, and also with what Zuckerman communicated during the LLH. He relied on Zuckerman's LLH account of diversion of union work to a nonunion carrier (Virginia Auto Transport in Bordentown, New Jersey). According to that account, a Local 89 member's alleged rate dispute led to the Union's investigation and findings that the Company had been replicating diversion activities at Detroit Metro and in other parts of the country. Goodwin testified that he needed the details about the locations, load sheets, transit orders, dates of diversion, type of traffic or vehicles involved, unit drivers involved, nonunion entities involved and other information which formed the basis of the Union's allegations so that the Company could investigate and prepare for the grievance and arbitration process. This included information about the individuals contacted by the Union at Detroit Metro, since Zuckerman specifically stated that in conducting their research, he contacted some people at Detroit metro, and discovered that the Company was giving nonunion work out of Detroit Metro, changing Union drivers' loads and making them "deadhead" home with empty loads.

Therefore, I fully discredit Zuckerman's testimony that the grievance issue only covered the diversion of work originating out of Bordentown, New Jersey. He claimed that any mention of issues at Detroit Metro or elsewhere was "just" talk," a "separate conversation," and had nothing to do with this case. (Tr. 183–184). However, during the LLH, Goodwin asked Zuckerman whether the grievance was a "blanket grievance . . . about anywhere we pick up used cars." In response, Zuckerman assured that:

> Yes, specifically it was – when it came to our attention was the situation in Bordentown, and then when we got looking into it, it became much broader than that, and still all a violation in our opinion. So yes, it's about the diversion of carhaul work to nonunion carriers, yeah.

(GC Exh. 10.) In addition, I find that Zuckerman's testimony in this regard was intentionally misleading and evasive. Even the grievance form appears to indicate that the Union's WPA violation claim extended beyond Bordentown, New Jersey, to unit work consisting of "hauling vehicles from terminals in Louisville/Jefferson County Kentucky and the surrounding area and other areas covered by the NMATA and Central-Southern and Eastern Supplements." (GC Exh. 2.)

Goodwin testified that the March 26 responses were insufficient because the Union only provided the member driver's name (Nicholson), but not the dates of the dispute, whether there were other drivers involved, rates of pay and details of the loads. Goodwin explained that the auction transit orders were only partially responsive to the Company's requests. They were vague, and did not address how the actual units/vehicles were to be transported, transit logs, drivers involved, persons with whom the Union spoke about Detroit Metro, circumstances around alleged "deadheading" of drivers, and details about the Company diverting traffic in New Jersey and Detroit. (Tr. 42–43, 131–133.)

Regarding the Union's response that it would provide certain information once it received it from the Company, Goodwin testified that if the documents were in the custody of the Company, the documents were not easily accessible without more details from the Union on what it had discovered. He described that trying to get the information without further details would be "like looking for a needle in a haystack. We're a big company. We haul thousands of loads a day. We haul millions of vehicles a year, and the Union alleged that they had that information. I believe personally they still have the information and won't share it with us." (Tr. 45.) Goodwin believed that the Union should have been able to provide information on which it based its grievance and allegations. (Tr. 42–45.) He also believed that the Union had possession of what he asked for based on Zuckerman's explanations during the LLH.

Regarding the Union's April 27 response, Goodwin denied that the Union had answered all of the Company's questions at the LLH. He testified that he did not ask for any specific information or documents at that time.[5] (Tr. 48). Based on the LLH, Goodwin did not believe that the Union had provided all of the information it possessed. (Tr. 49–50; 56, 62–63.)

Contrary to his statements during the LLH that he spoke to multiple people, Zuckerman testified that he only talked to one Detroit Metro Local 299 member, Tom Miller (Miller), who was also his close friend.[6] Zuckerman testified that in 2015, Miller informed him about JC Logistics' diversion of unit carhaul work to nonunion carriers in the Detroit Metro area.[7] Zuckerman maintained that the Union refused to divulge Miller's name to the Company because of the fear that the Company would retaliate and possibly terminate Miller within months of his retirement.[8] He based this belief on alleged past reprisals against the Company's employees for speaking out or filing grievances against the company. However, there was no evidence presented that the Company had retaliated against Miller

[4] A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), 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 incorporated into the findings of fact set forth herein.

[5] I credit Goodwin's testimony. The LLH transcript confirms that he did not ask for the specific, detailed information or documents sought in the requests during the LLH.

[6] Beginning with the LLH and up until the trial, the Union continued to mislead the Company into believing that Zuckerman had talked to more than one person in the Detroit Metro area. (Tr. 163–169, 180–181; 195–203; GC Exh. 9.)

[7] Zuckerman testified that he "misspoke" during the LLH, but I find it unbelievable that he did so. (Tr. 180–182.) I also find it irrelevant that Zuckerman might have been exaggerating or posturing about having evidence to support his claim. (Tr. 85.)

[8] Miller retired in October 2015.

or others. Rather, Miller had a prior grievance against the Company, which Zuckerman believed took too long to resolve.[9]

Miller confirmed that he had not wanted the Union to provide his name and contact information to the Company. However, he never asked or told Zuckerman not to do so. Miller also admitted that he had not personally experienced reprisals from the Company, but rather had "seen [other guys] just washed out" by the Union. By this, he explained that he heard Kevin Moore, the head of his Local 299 and director of the carhaul division, verbally disparage a bargaining unit employee before an arbitration hearing. (Tr. 195–203.)

Further, Zuckerman admitted in his Board affidavit that "[t]he Union did not respond to or provide any additional information to the Employer's March 13 and renewed April 10 requests for information to Question 9 because the Union did not consider that information to be relevant." Zuckerman never mentioned any fear of retaliation in his affidavit. (Tr. 171–172.) Zuckerman also testified that he would not have been able to represent Miller against any retaliation claims because Miller belonged to another local. However, as stated, there was no evidence to show that the Company (or his local) had attempted to retaliate against Miller in the past. Nor did the Company attempt to retaliate against Nicholson. Therefore, I question the legitimacy of and discount Zuckerman's testimony and the Union's much belated explanation as to why it would not supply names and information about employees in the Detroit Metro area or outside of Local 89.

Zuckerman also maintained that a number of the Company's requests for information were identical to those of the Union. (Tr. 171–172.) When asked, Goodwin denied that the Company's request number 14 (GC Exh. 4) was the same as the Union request number 19 (R. Exh. 2). He also denied that the Company's request number 15 (GC Exh. 4) asked for the same information as did the Union's requests number 4 and number 5 (R. Exh. 3) and number 19 (R. Exh. 2).

III. DISCUSSION AND ANALYSIS

A. Legal Standards

It is well established that, pursuant to Section 8(b)(3) of the Act, a union's duty to furnish information parallels that of an employer under Section 8(a)(5) and (1) of the Act. *California Nurses Ass'n.,* 326 NLRB 1362, 1362, 1366 (1998), citing S*ervice Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 (1990)); *Northern Air Freight*, 283 NLRB 922 (1987)); *Plasterers Local 346 (Brawner Plastering)*, 273 NLRB 1143, 1144 (1984) (Board found that the information requested by the employer was "unquestionably relevant to collective bargaining"); *Printing & Graphic Communications Local 13 (Oakland Press)*, 233 NLRB 994, 996 (1977).[10] An employer has a statutory obligation to provide a labor union, which is the collective-bargaining representative of its employees, with requested information which is necessary and relevant for carrying out the labor organization's duties in representing unit employees. Just as the employer is obligated to turn over relevant information so that the union can carry out its responsibility to handle grievances, the union must provide relevant information so that the employer can evaluate the merits of grievances and even possibly resolve them. *International Broth. of Firemen & Oilers Local 88 (Diversity Wyandotte)*, 302 NLRB 1008, 1009 (1991) (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437–438 (1967)). Therefore, an employer's request for information relating to a grievance is relevant in that it assists the employer in assessing the union's position and preparing for the grievance-arbitration process. *Local 13, Detroit Newspaper Printing and Graphic Communications Union*, 233 NLRB 994, 996 (1977). Where the request concerns information relating to employees in the bargaining unit, such information is presumptively relevant. *Fawcett Printing Corp*., 201 NLRB 964 (1973). When it is for information concerning employees outside the bargaining unit, the requesting party must show that it is relevant to bargainable issues. *United States Testing*, 324 NLRB 854, 859 (1997), enfd. 160 F.3d 14 (D.C. Cir. 1998); *Brooklyn Union Gas Co.*, 220 NLRB 189 (1975).

The Board does not assess the merits of the grievance or underlying dispute in order to determine relevancy. *Postal Services*, 332 NLRB 635 (2000). Rather, the standard for relevancy is a "liberal discovery-type standard," with the sought-after evidence not having to be necessarily dispositive of the issue between the parties. Rather, it must have only some bearing upon it, and be of probable use to the labor organization in carrying out its statutory responsibilities (or in this case, an employer in investigating the merits of the allegations). *Shoppers Food Warehouse*, Corp., 315 NLRB 258, 259 (1994); *Bacardi Corp.*, 296 NLRB 1220 (1989); *Howard University Hospital*, 290 NLRB 1006 (1988); *Pfizer, Inc.*, 268 NLRB 916 (1984). Necessity is not a guideline in itself but rather is directly related to relevancy, and only the probability that the requested information will be of use to the labor organization need be established. *Bacardi Corp.*, supra. Finally, "part of the duty to supply relevant information includes the duty to do so in a timely manner," and the failure to do so constitutes a violation of . . . the Act." *San Francisco Newspaper Agency*, 309 NLRB 901 (1992); *Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989).

If an information request is ambiguous, overbroad or concerns nonunit employees, this does not excuse the Union from its obligation to reply. The Board has long held that "an employer may not simply refuse to comply with such requests, "but must request clarification and/or comply with the request to the extent that it encompasses necessary and relevant information." *Keauhou Beach Hotel*, 298 NLRB 702, 702 (1990). Therefore, as with an employer, a union may not ignore or decide not to respond for those reasons without requesting clarification, or explaining the basis for believing the requests are ambiguous, vague or irrelevant.

Finally, I note here that the existence of an arbitration proceeding does not relieve either party from the duty to provide relevant information requested by the opposing party. See *California Nurses Assn.*, supra at 1366, citing *San Francisco Newspaper Agency*, 309 NLRB 901 at 901 (1992).

[9] Nevertheless, the arbitration panel decided in Miller's favor.

[10] See also (regarding employer's duty), *NLRB v. Acme Industrial, Co.,* 385 U.S. 432, 437–438 (1967)*; NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Aerospace Corp.*, 314 NLRB 100 (1994).

B. The Requests Were Relevant

In applying the above legal standards to the instant case, I find that the information requested by the Company is relevant and necessary in order for the Company to investigate and prepare for the grievance-arbitration process.

As shown above, the Union filed a grievance claiming that the Company violated the WPA under Article 33 of the NMATA by "diverting bargaining unit work currently performed by bargaining unit employees domiciled in Bowling Green, Warren County, Kentucky and the surrounding geographic area and is otherwise currently diverting bargaining unit work covered under the NMATA." Moreover, as previously stated, Zuckerman clearly communicated during the LLH that the Union's grievance claim extended to and included its finding that the Company had also been diverting union work to nonunion carriers in the Detroit Metro area and other parts of the country.

During the LLH, Zuckerman stated that:

> [I]n doing quite a bit of research on this, we understand that Logistics has got probably a dozen or so places around the country—Detroit Metro is one of them and I contacted some people at Detroit Metro, and the way it works up there now is that Logistics is operating an office up there. Our guys get dispatched—the Cooper Transit guys get dispatched, but then they have to check in with the Logistics office first, and they may change [their] loads at that time…[t]hey may give them different loads at that time, and take their loads and give them to nonunion competitors is what those drivers up there are telling me, and now because the Company is not backhauling, Logistics is giving nonunion work—or nonunion carriers work out of Detroit Metro and make our guys deadhead home, which if they're giving it to nonunion carriers, they're also violating the agreement. So that's the basis of the complaint is that Logistics is obtaining this carhaul traffic, and they are dolling it out to nonunion carriers.

(GC Exh. 10, p. 4). When Goodwin sought confirmation as to whether the grievance was much broader, Zuckerman confirmed that, "when it came to our attention was the situation in Bordentown, and then when we got looking into it, it became much broader than that, and still all a violation in our opinion." (Id.) Therefore, I find that the Company's requests were sufficiently relevant and necessary in order for it to respond to and participate in the grievance filed by the Union.

After the Company demonstrates the relevancy of the requested information, the Union has the burden to establish that the information was not relevant, did not exist or for some other valid and acceptable reason, could not be furnished. *Samaritan Medical Center,* 319 NLRB 392, 398 (1995), citing *Somerville Mills,* 308 NLRB 425 (1992) and *Postal Service,* 276 NLRB 1282 (1985). Here, the Union has failed to do so. The Union argued that the information regarding Detroit Metro or other areas was irrelevant because diversion of work there was not a part of the grievance. I discredited Zuckerman's testimony that his mentioning Detroit Metro and other parts of the county was just talk, and not relevant to the grievance. The Union also argued that it had nothing else about its investigation to give to the Company. I find this was not the case in that the Union admittedly possessed additional information about diversion of union work in the Detroit Metro and other areas

I understand that the Union is not able to supply information that it does not have, but it has a duty to either provide relevant information or tell the Company that it does not possess the requested documents. *Regency Service Carts, Inc.*, 345 NLRB 671 (2005); *Beverly California Corp.*, 326 NLRB 153 (1998). Rather than immediately letting the Company know that it did not have additional information, the Union chose to wait about a month after sending its initial March 26 responses. Similarly, the Union waited until April 27 to inform the Company that it would not produce names of drivers in other locations because of an alleged fear of retaliation. (GC Ex. 9). The Union failed to provide a reason for these delays. Therefore, I find that the Union delayed in providing responses to the Company's March 26 and April 10 requests for information. It also failed to provide additional information that I find it had, such as that pertaining to Detroit Metro employees and the employee with whom Nicholson spoke in New Jersey.

I further find that the Union failed to prove that its concerns about reprisals by the Company outweighed its interest in having such relevant information. *Detroit Edison Co. v. N.L.R.B.*, 440 U.S. 301, 302, 99 S. Ct. 1123, 1124, 59 L. Ed. 2d 333 (1979); *Tritac Corp.,* 286 NLRB 522, 522 (1987). The Board balances the need for information against any legitimate and substantial confidentiality interest established by the requesting party. *Earthgrains Baking Companies, Inc.,* 327 NLRB 605, 611 (1999). As part of the balancing process, the party asserting the claim has the burden of proving that such interests are in fact present and of such significance as to outweigh the need for the information. *Jacksonville Area Assn.,* 316 NLRB 338, 340 (1995). This balancing test is applicable here where the Union refused to supply evidence due to an alleged fear of retaliation against certain employees. Based on the evidence, I question the legitimacy of and discredit any real fear of retaliation. If this fear existed or was so great, I find that Zuckerman would have mentioned it in his Board affidavit. Instead, when asked about it, he said that he did not provide information about Detroit Metro or other employees because it was not relevant. Further, contrary to what Zuckerman implied, there was no evidence that Miller had been retaliated against by the Company in the past. Nor had Nicholson been retaliated for complaining about the rates and diversion in Bordentown. Therefore, I find that the Union has a duty in this case to furnish information requested by the Company's regarding diversion activities and practices in Detroit Metro and other areas.

In addition, the Board has held that if an employer is concerned about confidentiality, it cannot simply raise this concern, but must instead come forward with an offer to accommodate both its concern and bargaining obligation. *Tritac Corp.,* 286 NLRB 522, 522 (1987). Thus, it was the Union's duty, upon timely asserting its confidentiality or retaliation concerns, to promptly offer an accommodation to protect Miller and/or other unit employees outside of Local 89. See *The Finley Hospital*, 362 NLRB No. 2, slip op. at 11–12 (2015) (employer violated the act when it failed to offer an accommodation for 2 months). Here, the Union failed to do so at any time.

Therefore, I find that all of the requests were relevant, even

that information regarding unit employees outside of Local 89.

C. The Union Violated the Act by Failing and Refusing to Furnish and Delaying in Furnishing Requested Information

Since I have found that the requests for information were relevant to and necessary for the grievance process, I will address whether or not the Union violated the act by failing to respond.

In *California Nurses Assn.*, supra, the Board upheld the judge's decision that the union violated Section 8(b)(3) of the Act, "by refusing to provide the Employer with the facts and documents relevant to each incident on which the Respondent is relying to support its grievance and the names of persons involved in each incident." This case also involved relevant requests for information about employees who belonged to various bargaining units. *California Nurses Assn.*, supra at 1362. The Board did not agree that the employer was entitled to the names of witnesses that the union intended to call, stating that "it is well settled that there is no general right to pretrial discovery in arbitration proceedings." Id., citing *Tool & Die Makers' Lodge 78, (Square D Co.),* 224 NLRB 111, 112 (1976); *Transport of New Jersey*, 233 NLRB 694, 695 (1977); and *Firemen & Oilers Local 288 (Diversity Wyandotte)*, 302 NLRB 1008, 1008–1009 (1991). However, this limitation did not include names of witnesses and evidence supporting the actual incidents at issue. *California Nurses Assn.*, supra; *Fairmont Hotel Co.*, 304 NLRB 746, 748 (1991) (Board found a violation where employer refused to furnish, before an arbitration, names of witnesses to an incident for which an employee was disciplined); *Transport of New Jersey*, 233 NLRB 694 (1977) (Board found violation where party refused to supply names and addresses of witnesses to an accident required to process a grievance).

Here, the record shows that the Union provided written responses to the Company's March 13 request for information on March 26, and supplemented them with documents at some time before April 10. The Union ignored the Company's renewed requests dated April 10, which prompted the Company to send another letter on April 27, with an attached copy of its renewed requests. The Union sent a final response on April 27. Regarding request number 4, the Union responded that its member Nicholson, upset by his rate being cut out of Manheim, New Jersey, was denied access to the load he was given in Manheim. Further, Nicholson told the Union's business agent, Avral Thompson, that a security guard told him that the load belonged to Virginia Auto Transport. The response did not, however, specify the alleged date of the rate dispute, or specific details of the loads involved, including locations, rates of pay or delivery locations. In addition, the Union never responded to the renewed requests for the date that Nicholson spoke to Avral Thompson, time of discussion with the security guard, phone records of any such discussions and other individuals with whom the matter was discussed. Nor did it reference any attached documents which might have been responsive. On April 27, the Union mentioned that it would not make up information or dates unknown to Zuckerman. I find that these responses are insufficient and nonresponsive. I do not believe that the Union in its investigation failed to obtain dates and other information requested from Nicholson or others.

Although the Union did not reference them in its response to number 4, the transit orders sent to the Company on a later date included origination and destination locations, types of loads/vehicles, pay rates and pick-up and delivery dates. (GC Exh. 5 attachments.) The first transit order, dated November 24, 2014, has Nicholson's name along with some numbers handwritten in, with the carrier listed as JC Transport. It lists the pick-up location as Bordentown, New Jersey and the drop-off as Nashville, Tennessee. The second transit order (on the back of the first), dated January 14, 2015, reflects a load of vehicles with a lower pay rate that appears to have left the same origination site headed for Nashville, Tennessee. This order also lists the carrier as JC Transport, but has the name "Daniel Cole" handwritten on the side of it, and "Virginia Auto Transport," with "CROWE pulling out of Bordentown" handwritten on the bottom. There is no explanation, however, as to how these documents are responsive. Nor is there any indication that Nicholson's load was taken away, that he was deadheaded back home without a load or how was the affected JC Transport on January 14. Therefore, I also find that the transit orders and the written response to request number 4 were not sufficiently responsive. The Union's blanket response that it had no additional documents is unsupported by evidence that it had information in connection with Zuckerman's discussions with Miller, as well as Nicholson's conversations with Thompson and the security guard.

Further, the Union failed to respond to initial and renewed requests, in other words, numbers 4, 7, 9–10, 13–14, 15, and 17. Regarding number 7, the Union initially objected, asserting the attorney-client privilege, but without waiving said objection, stated to "see attached documents." The Union gave no explanation as to why it raised the attorney-client privilege. The Company asked for the complete copy of the Union's claimed investigation which led to its conclusion that JC Logistics had diverted union work to nonunion carriers, including load sheets, reports, pay sheets, dispatch records, logs, assignments, transit orders, grievances and email or other forms of electronic communications. The attached documents included the 2 auction to auction vehicle transit orders discussed above and several pages of public records of corporate and UCC filings for JC Logistics. The initial response did not inform that these were the only documents that the Union had in connection with its investigation, nor did it explain why the request was irrelevant. Further, those documents did not include names and contact information for "all persons contacted, talked to or interviewed by Local 89 and the sum and substance of the information obtained from each individual."[11] (GC Exh. 5, p. 2). I find that the Union failed to respond to this inquiry, as there is evidence that it had additional information as set forth above.

Regarding number 9, the Union initially objected to the relevance of the request and asked for justification as to why the Company asked for the names and contact information for all persons contacted and/or interviewed by Local 89 at Detroit Metro as part of its investigation of JC Logistics. I find that the

[11] A respondent is no longer exempt from providing witness statements in response to information requests. See *Piedmont Gardens*, 362 NLRB No. 139 (2015).

Company provided adequate justification for its inquiry in its April 10 renewed request. Moreover, the Union did not raise the fear of the Company retaliating against Detroit Metro or other non-Local 89 unit drivers until April 27. This was after Zuckerman stated during the LLH that he had investigated the diversion claim, which included talking to "people" at Detroit Metro. Since I have found the information relevant, and also discredited the Union's reasons for not providing information about other local union members, including Miller, I find that the Union failed to completely respond and delayed in providing its April 27 response.

Regarding number 10, the Union once again asserted the attorney-client privilege without explanation. Although it directed attention to the attached documents, those documents did not include any notes, statements, recordings or summary of information obtained from each person interviewed. Nor did the Union notify the Company that it only talked to two individuals—Nicholson and Miller.

Regarding number 13, the Union objected based on relevance. Since I have found that this information pertaining to JC Logistics diverting and changing loads was relevant based on Zuckerman's statements during the LLH, I find that the Union failed to provide relevant and necessary information.

Finally, regarding numbers 14, 15 and 17, the Union claimed it would provide responsive documents as soon as it received them from the employer (Nos. 14 & 17), and that it would not be able to respond because it had not yet received requested vehicle transit orders from Manheim, New Jersey (No. 15). Here, the Company asked for evidence to support the Union's allegations during the LLH. I find this answer to be nonresponsive to the request for relevant information. In addition, I find that the Union based its response on the irrelevant fact that the Company failed to provide it with information. See *United States Gypsum Co.*, 200 NLRB 305, 308 (1972).

As stated, it was not until its April 27 response that the Union decided to advise the Company that it had already provided all of the information in its possession. The level of detail included in the Company's information requests was not discussed at the LLH. Moreover, there was no explanation provided as to why the Union waited to April 27 to do so, except that Zuckerman was upset with the Company and refused to comply. Nor was there any reason given as to why the Union waited until April 27 to raise its fear of retaliation on behalf of members outside of Local 89.

I do not find, however, that the Union had a duty to provide the Company with "a request for admission by Local 89 that it has/had no such evidence to justify its grievance" (requests 14 and 15). (GC Exh. 6). It did however, have a duty to timely notify the Company of any information that it did not possess.

Since I have found that the requested information was relevant to the allegations put forth in the grievance and at the LLH, with the exception of the request for admissions, I find that the Union neither sufficiently nor timely responded to the initial or renewed requests at issue. In failing to do so, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) of the Act.

D. Affirmative Defenses

First, the Union's defense that the complaint failed to state a claim upon which relief may be granted is unsupported by the record.

In its brief, the Union made several other arguments under the auspices of findings of fact. (R. Br. at paragraphs 70–75.) The Union argued that a party's assertion that it needs information to process a grievance does not automatically compel the responding party to supply all information. I agree, and have found based on the circumstances of this particular case, that the General Counsel has met its burden of showing that the Company was entitled to receive relevant information to assist it in the grievance/arbitration process. *Detroit Edison Co.* v. *NLRB*, supra; *NLRB v. Truitt Mfg. Co.*, supra.

The Union also argued that it is not required to furnish information that it does not have, citing several cases in support of this argument. In those cases, the respondents first had to satisfy their burden of showing that the information did not exist. In this case, as discussed above, the evidence shows that the Union admittedly refused to provide the Company with information that it had concerning Detroit Metro and other evidence surrounding its claim that the Company had been diverting union carhaul work. Zuckerman's statement during the LLH, as well as the grievance, triggered the Union's duty to provide the information.

The Union's argument that the Company had certain of the requested information available to it through other means, such as its affiliates, is also without merit. The fact that a requesting party may obtain information by other means or from another source does not minimize its obligation to furnish relevant information. *Holyoke Water Power Co.,* 273 NLRB 1369, 1373 (1985). Goodwin admitted that the Company or one of its affiliates might have some information about its drivers or loads, but sufficiently explained that it would be difficult to find without knowing more details about the Union's diversion claims.

The Union asserted that the Company acted in bad faith by using its information requests as a means to delay an arbitration hearing, but the record does not demonstrate that this was the case. Rather, the evidence shows that the Union requested an extension of time to allow for responses to its own requests. There is no evidence that the Union objected in either of its responses (March 26 or April 27) to the Company's right to make such requests. Although Administrative Law Judge Olivero found that the Company violated the Act by failing to respond to Union's requests for information, she did not find that in doing so, the Company sought to delay the arbitration process. Moreover, the issue of whether the Company or the arbitration committee delayed arbitration is not before me.

I also reject the Union's bad-faith contention that many of the Company's requests mirrored their own. After reviewing the examples that the union counsel pointed out in his questions to Goodwin on cross-examination, I find no evidence to support this argument.

Finally, I have already addressed the Union's confidentiality concerns, and found them to be without merit. In doing so, I have agreed with the General Counsel that the Union must have provided evidence of its confidentiality interests, and not just "generalized accusations" of a "present danger that outweighs

the other party's interest." (GC Br. at p. 10), citing *King Broadcasting Co.*, 324 NLRB 332 (1997).

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is, and, at all material times, has been the exclusive bargaining representative for the following appropriate unit:

> [A]ll employees in the classification of work covered by the National Master Automobile Transporters Agreement, effective June 1, 2011 to August 31, 2015, and Supplement thereto, but excluding supervisory, managerial, guard and confidential employees.

4. By failing and refusing to provide and delaying in providing the Company with relevant information as requested in its March 13, 2015 requests for information and April 10 renewed requests, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices committed by the Union are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Union has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Union is hereby ordered to cease and desist from refusing to bargain with the Company by refusing to provide and delaying in providing information that it needs to prepare for and/or defend the underlying grievance. In addition, it is ordered to furnish the Company with all information requested in its information requests dated March 13 and April 10 (i.e., requests 4, 7, 9, 10, 13, 14, 15, and 17), except for the information requiring the Union to provide admissions that they did not have any evidence that the Company had diverted union work.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Union, General Drivers, Warehousemen and Helpers Local Union 89 (a/w The International Brotherhood of Teamsters), its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the Company, by failing and refusing to furnish relevant requested information.

(b) Failing and refusing to bargain collectively with the Company by delaying in providing relevant requested information.

(c) In any like or related manner 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) Promptly furnish the Company in a timely manner the information that it requested on March 13 and April 10 (i.e., requests 4, 7, 9, 10, 13, 14, 15, and 17), except for the information requiring the Union to provide admissions that they did not have any evidence that the Company had diverted union work.

(b) Within 14 days after service by Region 9, post at its facilities in Kansas City, Missouri and Louisville, Kentucky, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Union's authorized representative, shall be posted by the Union and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Union customarily communicates with its member employees by such means. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) 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 Union has taken to comply.

Dated, Washington, D.C. February 6, 2017

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
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 on your behalf with your employer

Act together with other employees for your benefit and protection

[12] 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.

[13] 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."

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with Jack Cooper Holdings d/b/a Jack Cooper Transport Co. by refusing to furnish it or delaying in furnishing it with relevant and necessary requested information in connection with the grievance that we filed.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish Jack Cooper Holdings d/b/a Jack Cooper Transport Co. with the information it requested on March 13, 2015, and on April 10, 2015, regarding requests 4, 7, 9, 10, 13, 14, 15, and 17 (except for requests for admissions that we did not have any evidence to support our grievance).

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION 89 (A/W THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CB-157260 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.