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PAE Aviation and Technical Services LLC and International Association of Machinists and Aerospace Workers, Local Lodge 2949, AFL-CIO.
Cases 28-CA-170401 and 28-CA-175936

May 24, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

On October 19, 2016, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief. The General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply.

The National Labor Relation 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, cross-exceptions, and briefs and has decided to affirm the judge's rulings,¹ findings,² and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified and set forth in full below.³

We agree with the judge, for the reasons set forth in his decision, that the Respondent violated Section 8(a)(1) of the Act by threatening employees, via its manager, William Phillips, that it would be futile to invoke their *Weingarten*⁴ rights because the Respondent does not follow the *Weingarten* rule.⁵ Contrary to the judge and for

¹ The Respondent argues on exception that the judge erred by preventing it from adducing additional evidence regarding its regulatory obligations as a government contractor. Assuming arguendo that the judge erred in his ruling, we find that the additional evidence would not affect our disposition of this case.

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 modified the judge's recommended Order to reflect the violations found and have substituted a new notice to reflect these modifications.

⁴ *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

⁵ Specifically, after Union steward Stephanie Karelis stated that supervisors should honor employee requests for a union representative when they invoked their *Weingarten* rights, Phillips responded "I don't abide by the *Weingarten* rights" . . . "I only follow the CBA," and supervisors can have one-on-one discussions with employees without stewards, even if stewards are requested. We agree with the judge that

the reasons set forth below, we find that the Respondent violated Section 8(a)(1) of the Act by (1) denying employee David Rosenberger his *Weingarten* rights; (2) delaying in providing the Union requested information regarding a grievance filed by Rosenberger; and (3) failing to provide to the Union requested information regarding a grievance filed over the discipline of employee Christopher Mertes. We address these issues in turn.⁶

1. We find, contrary to the judge, that the Respondent violated Section 8(a)(1) of the Act by denying employee David Rosenberger his *Weingarten* rights. On February 8, 2016,⁷ the Respondent disciplined Rosenberger by issuing him a "written verbal warning" for sleeping on the job on February 1. Rosenberger refused to sign the disciplinary form and did not admit sleeping. The Respondent requested he submit a written statement concerning the incident. Rosenberger did so and again denied sleeping.

On February 10, Rosenberger's supervisor, Stephen Woolley, visited Rosenberger at his work cubicle. Woolley stated he wanted to speak to Rosenberger in Woolley's office. Rosenberger requested a union representative. Woolley denied the request and stated that their discussion would not lead to discipline; that he wanted to have a one-on-one conversation to clear the air about the sleeping incident; and that they both knew that Rosenberger was lying about not sleeping. The meeting between Woolley and Rosenberger at Rosenberger's cubicle lasted an hour and a half or more, during which Rosenberger ultimately admitted to having lied.

Under *Weingarten*, an employer violates Section 8(a)(1) of the Act when it denies an employee's request to have a union representative present at an investigatory interview that the employee reasonably believes might result in disciplinary action. See 420 U.S. at 253. The

Phillips' statements to Karelis and employee David Rosenberger violated Sec. 8(a)(1) by unlawfully conveying to employees that it would be futile for them to invoke their *Weingarten* rights. Our colleague's contrary view—that Phillips was merely describing the parties' CBA provision—was never argued by the Respondent and, in any event, lacks merit. As the judge noted, the CBA provides for representation when employees are administered discipline. It is not coextensive with *Weingarten* which entitles employees to representation where they reasonably fear they could be disciplined.

Member Emanuel would dismiss this allegation. In his view, no violation occurred because the Respondent's manager Phillips accurately cited the parties' contractual provision agreed to by the Union concerning *Weingarten*, and observed that the Respondent follows the parties' collective-bargaining agreement.

⁶ The judge additionally found that the Respondent violated Sec. 8(a)(1) of the Act by maintaining overly broad work rules requiring employees (a) to work harmoniously with others and (b) to cooperate in a company investigation. We shall sever these issues and retain them for further consideration.

⁷ All dates are in 2016.

judge found that Rosenberger would not have reasonably believed that his February 10 meeting with Woolley might result in discipline, because he had already been disciplined on February 8 for the sleeping incident.

We disagree. The judge failed to appreciate that the February 8 discipline received by Rosenberger did not in any manner address his truthfulness, and a principal purpose of the February 10 meeting was Woolley's effort to establish that Rosenberger lied to the Respondent about the sleeping incident. While *Weingarten* rights do not apply where the sole purpose of a meeting is the imposition of predetermined discipline, if the employer goes beyond merely informing the employee of a previously made disciplinary decision, "the full panoply of protections accorded the employee under *Weingarten* may be applicable. Thus, for example, were the employer to inform the employee of a disciplinary action and then seek facts or evidence in support of that action, *or to attempt to have the employee admit his alleged wrongdoing* or to sign a statement to that effect . . . the employee's right to union representation would attach." (Emphasis supplied.) *Baton Rouge Water Works Co.*, 246 NLRB 995, 997 (1979).

This is precisely what occurred here. Even after the discipline for the sleeping incident had been imposed, Woolley continued to question Rosenberger about it, focusing in particular on the veracity of Rosenberger's written statement. The Respondent's work rule 31 expressly prohibits employee "dishonesty" and imposes discipline—recommending discharge—for such infraction. Whether an employee reasonably believes that an interview might result in disciplinary action is measured by an objective standard under all the circumstances of the case. See *NLRB v. J. Weingarten*, 420 U.S. at 257 fn. 5; *Southwestern Bell Telephone Co.*, 338 NLRB 552, 552 (2002). We find that in the circumstances here Rosenberger would reasonably believe that the February 10 meeting might result in further disciplinary action for dishonesty in addition to the discipline already received for allegedly sleeping while at work.⁸ We accordingly

⁸ See *Texaco, Inc.*, 251 NLRB 633, 636 (1980) (*Weingarten* violation found where respondent "went beyond the act of imposing discipline and sought and secured an admission from [the employee] of possible misconduct," and thus was "continuing, on a substantive basis, its investigation of the incident"), *enfd.* 659 F.2d 124 (9th Cir. 1981).

In light of Woolley's questions regarding Rosenberger's truthfulness at the meeting and the Respondent's disciplinary rules regarding dishonesty, Woolley's statement at the meeting that no disciplinary action would ensue was, alone, insufficient to dispel Rosenberger's reasonable belief. See *Lennox Industries*, 244 NLRB 607, 615 (1979) ("[t]he avowed purpose or intention of an employer in conducting the interview" is not dispositive of the ultimate *Weingarten* finding), *enfd.* 637 F.2d 340 (5th Cir. 1981), *cert. denied* 452 U.S. 963 (1981). Cf. *Consol-*

find that the Respondent violated Section 8(a)(1) of the Act by unlawfully denying Rosenberger's request for union representation under *Weingarten* on February 10.⁹

2. We find, contrary to the judge, that the Respondent violated Section 8(a)(5) and (1) of the Act by delaying in providing the Union with requested information regarding a grievance filed by Rosenberger concerning his sleeping discipline.

It is axiomatic that an employer has a duty to furnish to a union, on request, information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Information pertaining to bargaining unit employees is presumptively relevant and necessary and must be produced. *Allison Corp.*, 330 NLRB 1363, 1367 (2000). It is also well settled that an employer is obligated to provide information that is relevant to a union's filing or processing of grievances. See *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000). The Board applies a liberal test to determine whether information is relevant; the issue is whether the requested information is of "probable" or "potential" relevance. See, e.g., *Piedmont Gardens*, 362 NLRB No. 139, slip op. at 3 (2015); *Transport of New Jersey*, 233 NLRB 694, 694 (1977).

On February 11, the Union made a multi-item information request concerning the grievance filed over the Rosenberger sleeping incident. The Respondent timely complied, except for the final item: "Provide a list of all of QCs [quality control employees'] assigned duties and task." (Rosenberger worked in the quality control classification.) The Respondent deemed that information "not relevant" and refused to provide it, but offered no further

idated Edison Co. of New York, 323 NLRB 910, 910 (1997) ("[I]t is no answer to this allegation of a *Weingarten* violation that the Respondent's supervisors . . . had no intention of imposing discipline on [the employee] at the time of the interview. [This] condition[] is [not] inconsistent with Hunter's reasonable belief that discipline could result from the interview.").

In fact, Rosenberger's concerns about Woolley's questions were validated when Woolley cited Rosenberger's admission to sleeping as a defense to the grievance the Union filed pertaining to Rosenberger's February 8 discipline.

⁹ Member Emanuel observes that an employer's assurance that no discipline will result prior to an employee interview is relevant to, and, in some circumstances, may be sufficient to entirely dispel, an employee's reasonable belief that discipline might result from the interview. See, e.g., *Amoco Chemicals Corp.*, 237 NLRB 394, 397 (1978) (dismissing *Weingarten* violation based on employer assurance of no disciplinary action). Despite the Respondent's assurance, however, Member Emanuel agrees that a *Weingarten* violation occurred under the unique circumstances presented here, including the extremely lengthy meeting seeking to secure Rosenberger's admission that he had lied in the Respondent's investigation.

explanation. On May 23, the Union again requested the omitted information. On May 25, over 3 months after the Union's initial request, the Respondent provided it to the Union.

The judge dismissed the allegation that the Respondent unlawfully delayed providing this information. The judge reasoned that the requested information was not relevant because it would not resolve the "ultimate issue" raised by the grievance—whether Rosenberger was in fact sleeping on the job. We do not agree with the judge's reasoning. It is well settled that the requested information, which here is presumptively relevant because it pertains to unit employees, need not be dispositive of the central issue raised by the grievance. See *Piedmont Gardens* supra, slip op. at 3; *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). It is sufficient, for example, that the information bear on the Union's preparation of a defense for the grievant, its assessment of the discipline imposed for comparable infractions, or its determination whether to continue to process the grievance. See *Holiday Inn on the Bay*, 317 NLRB 479, 481–482 (1995). Rosenberger's apparent defense to his discipline was that he had too many assignments on the day in question to take lunch or break-times for rest, and that other employees slept during their lunchbreak without discipline. The Union's request for a list of the duties typically assigned to quality control employees was potentially relevant to Rosenberger's assertion of a workload-related defense, as well as a disparate treatment defense.

An unreasonable delay in furnishing relevant information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. See *Woodland Clinic*, 331 NLRB 735, 736 (2000); *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). Absent evidence of justification, such a delay will constitute a violation of Section 8(a)(5) inasmuch "[a]s the Union was entitled to the information at the time it made its initial request, [and] it was Respondent's duty to furnish it as promptly as possible." *Pennco, Inc.*, 212 NLRB 677, 678 (1974). The Respondent has presented no evidence justifying its more than 3-month delay in furnishing the requested information. The duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow. See *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). The Respondent's failure to do so violated Section 8(a)(5) and (1) of the Act.¹⁰

¹⁰ See, e.g., *Bundy Corp.*, 292 NLRB 671 (1989) (2-1/2-month delay unlawful); *Operating Engineers Local 12*, 237 NLRB 1556 (1978) (6-week delay unlawful).

3. Contrary to the judge, we find that the Respondent also violated Section 8(a)(5) and (1) by failing to provide the Union with requested information concerning employee Christopher Mertes, who was disciplined in April 2016 for losing one of the Respondent's tools. The Union grieved the discipline and on April 14 requested three items of information "for purposes of grievance investigation." The Respondent provided two of the requested items, but refused, on relevance grounds, to provide "4 samples of at least 5 employees' tool inventory control sheets on swing shift from January 2016 to April 2016."¹¹ The judge found that the refusal was not unlawful, reasoning that "[f]our samples of five employees' tool inventory control sheets would have no relevance to whether [Mertes] had actually lost a tool."¹²

Again, the judge failed to appreciate that the requested information was presumptively relevant and need not dispose of the principal issue at stake, but need only have some bearing on the issues raised, including anticipated defenses. Potentially relevant issues were not limited to whether Mertes in fact lost a tool; indeed, Mertes was disciplined not only for losing a tool but also for failing to properly fill out the inventory control sheets. The Union's position set forth in the grievance documents questions the Respondent's consistent enforcement of the inventory control sheet policy and whether management was allowed to deviate from that policy. Potential issues thus include employees' overall compliance in filling out inventory control sheets, how frequently tools were lost, and the discipline imposed in those instances. These issues would all bear on the Union's investigation of whether Mertes was being disparately treated and its decision to continue pursuing the grievance. We accordingly find that the Respondent violated Section 8(a)(1) of the Act by failing to provide the Union with the requested information regarding the grievance filed over the discipline of Christopher Mertes.

ORDER

The National Labor Relations Board orders that the Respondent, PAE Aviation and Technical Services LLC, Tucson, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that it would be futile to invoke their *Weingarten* rights because the Respondent does not follow the *Weingarten* rule.

¹¹ Each employee is required to complete an inventory control sheet documenting tool use before each shift, after each job, and at the end of each shift.

¹² The Respondent similarly disputed the relevance of inventory control sheets for any employee but Mertes.

(b) Failing to honor employees' requests for union representation.

(c) Unreasonably delaying in furnishing the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

(d) Refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees

(e) 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 on April 14, 2016 for "4 samples of at least 5 employees' tool inventory control sheets on swing shift from January 2016 to April 2016."

(b) Within 14 days after service by the Region, post at its Tucson, Arizona, facility copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 28, 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 notice is 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 November 11, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 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 allegations concerning the Respondent's unlawful maintenance of

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."

work rules are severed and retained by the Board for further consideration.

Dated, Washington, D.C. May 24, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you that it would be futile to invoke your Weingarten rights because the Respondent does not follow the *Weingarten* rule.

WE WILL NOT fail to honor your requests for union representation.

WE WILL NOT unreasonably delay in furnishing the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees

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

WE WILL furnish to the Union in a timely manner the information requested by the Union on April 14, 2016 for “4 samples of at least 5 employees’ tool inventory control sheets on swing shift from January 2016 to April 2016.”

PAE AVIATION AND TECHNICAL SERVICES LLC

The Board’s decision can be found at <https://www.nlr.gov/case/28-CA-170401> 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.



Kristin White, Esq., for the General Counsel.
Jeffrey Toppel, Esq. (Jackson Lewis, P.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in Tucson, Arizona, on August 30, 2016.¹ The complaint, which issued on July 1, 2016, was based upon unfair labor practice charges as well as first and second amended charges that were filed by International Association of Machinists and Aerospace Workers, Local Lodge 2949, AFL-CIO (the Union), between February 24 and June 21. The Union is the collective-bargaining representative for the following employees of PAE Aviation and Technical Services LLC (the Respondent): “All full-time aircraft maintenance and avionic technicians located at Davis-Monthan Air Force Base, Arizona; excluding all office clerk employees, professional employees, managerial employees, guards and supervisors as defined in the Act,” and the Union and the Respondent are parties to a collective-bargaining agreement effective from July 2, 2015 to July 29, 2018. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct: maintaining two overly-broad and discriminatory rules in its disciplinary process and threatening employees with discipline, including termination, if they violated the rules; on about February 10, by Stephen Woolley, its quality control supervisor, denied the request of employee David Rosenberger to be represented by the Union during an interview even though Ros-

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2016.

enberger had reasonable cause to believe that the interview would result in disciplinary action being taken against him, and Woolley continued the interview after denying Rosenberger’s request to have a union representative present; on about February 11 Respondent, by William Phillips, its site manager, threatened employees by informing them that it would be futile for them to invoke their *Weingarten* rights; and by unreasonably delaying, and failing to provide the Union with information that it requested since on about April 14, information that was relevant to the Union as the collective-bargaining representative of certain of the Respondent’s employees, in violation of Section 8(a)(1)&(5) of the Act.

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS AND ANALYSIS

A. Disciplinary Rule Allegations

It is alleged that the following rules maintained by the Respondent since about November 11 are overly broad and discriminatory, and violate Section 8(a)(1) of the Act:

Disciplinary Rule Violation

...

12. Inability or unwillingness to work harmoniously with others. Conduct which demonstrates a lack of desire or ability to work in the spirit of harmony or cooperation with the efforts of coworkers, customers, subordinates, or superiors, including unlawful discriminatory behavior of any type.

...

19. Failure or refusal to cooperate with or interfering in a Company investigation.

It is further alleged that since November 11 the Respondent has threatened its employees with discipline if they violate these rules.

Respondent has a contract with the Department of Homeland Security to provide aircraft maintenance for aircraft of the Customs and Border Protection Agency that patrols the border between the United States and Mexico. These rules and others, not alleged, have been in effect since October 10, 2014, and are distributed to all employees. Donald Smith, director of human resources and labor relations for the Respondent, testified that its disciplinary rules are necessary because the Respondent, as a government contractor, is subject to “many regulations.” As regards rule 19, that is important because “we fall under a lot of guidelines . . . and it’s very important that if somebody makes a complaint against us, that we investigate that thoroughly . . . and there’s an expectation that our employees participate in that investigation.”

In determining whether these provisions violate the Act, I initially look to *Lutheran Heritage Village- Livonia*, 343 NLRB 646 (2004). Under that test, the initial inquiry is whether the rule at issue explicitly restricts activities that are protected by

Section 7 of the Act; if so, it is unlawful. If not, a finding of a violation is dependent upon a showing of one of the following: employees would reasonably construe the rule to prohibit protected activity, or the rule has been applied to restrict the exercise of that activity. As rule 12 does not explicitly restrict Section 7 rights, and as there is no evidence that the rule has been applied to restrict the exercise of those rights, the test is whether employees would reasonably construe it to prohibit protected activity. I believe they would. Right on point is *2 Sisters Food Group, Inc.*, 357 NLRB 1816, 1817 (2011), where the rule subjected employees to discipline for the “inability or unwillingness to work harmoniously with other employees,” without clearly defining what it means to “work harmoniously.” In finding that this rule violated Section 8(a)(1) of the Act, the Board stated:

In these circumstances, we agree with the judge that the Respondent’s rule was sufficiently imprecise that it could encompass any disagreement or conflict among employees, including those related to discussions and interactions protected by Section 7, and that employees would reasonably construe the rule to prohibit such activity.

Similarly, the Board found in *William Beaumont Hospital*, 363 NLRB No. 162 (2016), that the introductory paragraph to the rules which restricts “conduct . . . that impedes harmonious interactions and relationships” to be overbroad. The same is true in this situation, and I find that rule 12 violates Section 8(a)(1) of the Act. Counsel for the Respondent in his brief cites *Copper River*, 360 NLRB 459 (2014), for the proposition that rule 12 is lawful. However, I find that these cases are distinguishable in that the challenged rule in *Copper River*, by referring to “insubordination” is more specific than paragraph 12 and is not “imprecise” and subject to varying interpretations as is rule 12. For example, if employees disagree over whether to support a union or to engage in concerted activities that could conceivably be considered as violating rule 12. Further, *Copper River* is a restaurant and the rule refers to the impact the action would have on its guests, obviously, not applicable in this matter.

Rule 19 is not as obvious. It requires the employees to cooperate and not interfere with company investigations. As it does not explicitly restrict Section 7 rights, the question is whether employees would reasonably construe this rule to restrict their Section 7 rights. As the Board stated in *Ingram Book Co.*, 315 NLRB 515, 516 fn. 2 (1994): “rank and file employees do not generally carry law books to work or apply legal analysis to company rules as do lawyers, and cannot be expected to have the expertise to examine company rules from a legal standpoint.” I find that employees could reasonably construe this provision to restrict their *Weingarten* rights to demand to have a representative present during an investigation and their right to band together with other employees to engage in protected concerted activity by refusing to participate in what they consider a biased or unfair investigation. I therefore find that rule 19 also violates Section 8(a)(1) of the Act. Although I have found that these rules violate the Act, as no evidence was adduced that any employee was threatened with termination, including discipline, for violating these rules, I recommend that

this allegation be dismissed.

B. *Weingarten Allegations*

It is alleged that by questioning Rosenberger, who is no longer employed by the Respondent, at his workstation on February 10, and by not permitting him to have a union representative present to represent him, Respondent, by Woolley, violated Section 8(a)(1) of the Act. This involved an allegation that Rosenberger was sleeping while at work on February 1. On February 4, Rosenberger received a call from Phillips saying that he wanted to see him in his office that morning. He immediately went to Phillips’ office and when he got there, Phillips was there with Ray Donahue, the director of maintenance for the Respondent, Manny Corona, acting supervisor replacing Woolley who was out that day, and Michael Jackson, the Union’s business representative. Rosenberger testified that Phillips said that he was being charged with sleeping on the job and that he needed a statement from him. Jackson asked what the charges were and Phillips said that he was observed sleeping on the job on February 1. Jackson asked why he waited so long and Phillips said that pursuant to the contract, he had 7 days to file charges. Rosenberger asked for more particulars about the charge and Phillips said that several witnesses saw him sleeping that Monday morning. Rosenberger explained that he had only been on that overnight shift for a few weeks and that it was a very busy evening and that he missed his lunch and his breaks that evening because of the workload. Jackson then said that they would give him a statement at a later time and the meeting ended. A few minutes later Rosenberger wrote a statement about the events of February 1 and gave it to Jackson, who read it and gave it to Phillips². On February 8 Rosenberger was again called into Phillips’ office and, in addition to Phillips, Jackson and Donahue were present. Phillips told him that he was found guilty of sleeping at work and that three supervisors saw him sleeping while at work on February 1 and he asked if he would admit it, and he said that he would not admit it. Phillips asked him to sign the disciplinary form and Jackson told him that he didn’t have to sign it and he refused to sign it.

Phillips testified that at the February 4 meeting he told Rosenberger that on the basis of statements from several coworkers who observed him sleeping on the job on February 1, they determined that he had violated company policy by sleeping on the job and that he needed a statement from him. As a result of this incident, Rosenberger was given an “Employee General Counsel Form.” At the top, it states: “This form is for documenting informal discussions with an employee. It is not considered a formal step of progressive discipline. It may be attached to formal disciplinary action as additional documentation.” After reciting the facts of the meetings with Rosenberger and Jackson, it states:

Summary of Counseling Given: This action is a violation of #29, Table "A" Violations and Recommended Progressive Steps in PAE Policy #314 Disciplinary Process. Item 29 of

² Rosenberger’s statement states that he does not recall falling asleep that night although he “struggled” with the change to the overnight shift. He also stated that if he was sleeping, “which I am uncertain,” that it was for only “momentary.”

policy 314 states that sleeping while on duty is an infraction. The policy states that this infraction, dependent upon severity of violation, may include discipline up to and including termination. Sleeping while on duty is unacceptable and must be halted immediately.

Woolley testified that this letter is not considered to be discipline, rather it is referred to as a "written verbal," which means that the action was unacceptable, needs to be changed and if it continues, it could lead to discipline.

The *Weingarten* allegation of the complaint relates to a conversation between Woolley and Rosenberger at Rosenberger's work location early in the morning of February 10. Rosenberger testified that on February 10, at about 4:30 a.m., while he was at his desk working, Woolley came to his cubicle wearing a heavy overcoat and said, "Dave, I need to speak to you in my office, man to man, one on one, no witnesses." Rosenberger replied that it was not a good idea without union representation and Woolley repeated what he had said and Rosenberger said that he was not going to Woolley's office without union representation. Woolley again repeated his request, but "with more volume and more integrity" and Rosenberger answered, "Not a chance." Woolley turned around as if he were leaving, slammed the door, and returned and took an office chair "and pulled it up to the edge of my cubicle and sat down" about 3 feet from Rosenberger and "was blocking my exit from my office. . . Mr. Woolley had a red face, his voice was shaking with anger and he had his fist clenched" Woolley then said: "Dave, what is it going to take to be a part of the team? I need you to confess that you were sleeping on the job, man up to this, own it, so that we can move on." He responded that he was very busy that night, was on his lunchbreak because he missed all his breaks and lunch and said that Jesse Brown, one of his accusers, sleeps several times a week at his desk during his lunchbreak. Woolley said that he knows that Rosenberger sleeps on the job and everybody knows it and Rosenberger responded what about Brown, and Woolley said that he never saw him sleeping on the job. Rosenberger then said, what about Mr. Nichols, who spends quite a bit of time on the internet and takes numerous personal calls and Woolley said that Nichols was not the issue. He also said that he needed to confess what he did and that he only received a written counseling and was blowing it out of proportion and Rosenberger said that he wanted the charges dropped because they were unjust. At about 5 a.m. employee Michael McGuire walked into the office and asked Rosenberger if he could come out for an inspection, and Woolley said that they would address it later on and McGuire left the office. The conversation continued in the same vein with Woolley telling him that he should confess to sleeping on the job and that he should "man up" so that they could continue to move forward. Another employee walked into the office at about 6:10, saw Woolley and turned around and left. At about 6:45 another employee walked in, saw that Woolley was sitting in his chair and walked out. Shortly before 7 a.m., Woolley stood up and said, "Dave, I'm sick and tired of dealing with you and I could spit" and walked out of the office. He testified that during this discussion, Woolley asked him to confess between ten and fifteen times. On the following even-

ing Rosenberger sent a text message to Stephanie Karelis, shop steward for the Union, and said that he wanted to tell her about his meeting with Woolley "in case he comes back tonight with a firearm and gets a clean shot at me."

Woolley testified that while his shift begins at 7 a.m. he went to speak to Rosenberger in his office between 5 and 5:30. The reason for the meeting was "to clear the air." He heard that Rosenberger was intentionally not following his orders and he wanted him to be able to discuss his attitude and "vent" and talk about his feelings toward him. On that morning he was wearing a company windbreaker; he does not have an overcoat. When he walked into Rosenberger's office he said that he wanted to speak to him in his office and Rosenberger said that he wanted a union representative present. He then said: "Dave, you're not in trouble. Nothing here is going to lead to disciplinary action. I want to talk to you man to man to try to clear the air," and that anything said between them would go no further. Rosenberger said that he wanted witnesses because he was worried that something might happen if they were alone, that he was worried that Woolley was going to attack him. At the beginning of the meeting Rosenberger seemed agitated, but by the conclusion of the meeting he had calmed down. During this conversation he sat in a chair by a desk about 6 to 8 feet from him with "more than enough room for him to leave the cubicle." He told Rosenberger that they both knew that he was lying in what he wrote about the February 1 incident and Rosenberger admitted that he did lie in his written statement to the company. He testified that he does not believe that he told him to admit that he was sleeping on the job because he saw him sleeping. On February 12, the Union filed a grievance alleging that at this meeting, Woolley "badgered" Rosenberger for 2 hours, in violation of the contract.

Stephanie Karelis, union shop steward, testified that early in the morning of February 11 she received a text message from Rosenberger stating that Woolley attempted to have a one-on-one meeting with him and he asked for a shop steward and Woolley became hostile and aggressive toward him. She told him that she would discuss the incident with Phillips and at about 7:00, she and Rosenberger went to Phillips office. Rosenberger began by telling Phillips about the incident and Phillips interrupted him and said, "wait a minute. My supervisors can have meetings or conversations with employees without shopping for a shop steward if one is asked for." She responded that if employees choose to exercise their *Weingarten* rights, the supervisor should honor that request. Phillips then said that he doesn't abide by the *Weingarten* rights, but he follows the CBA³, and repeated that supervisors can have one-on-one conversations with employees without the presence of shop stewards even if they are requested. Phillips testified that he told Karelis that the *Weingarten* rights are fine, but they also go by the CBA. He never told her that they only go by the CBA. Karelis responded that they were denying Rosenberger's

³ The contract between the parties states: "In all cases where an employee is being discharged, suspended or will be receiving a written warning notice, or written reprimand, the employee shall be advised of his or her right to union representation and have a union steward present."

Weingarten rights, which he denied and said, “We go by the CBA.”

The initial allegation is that Respondent, by Woolley, denied Rosenberger his *Weingarten* rights at the early morning meeting on February 11. In *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), the Court found that Section 7 of the Act creates a statutory right for an employee to refuse to participate in an investigatory interview with the employer, without union representation, when he/she reasonably fears that the meeting may result in disciplinary action being taken. These “reasonable fears” are to be measured by objective standards considering all of the facts of the case. In *Consolidated Edison Co.*, 323 NLRB 910 (1997), the Board stated: “it is no answer to this allegation of a *Weingarten* violation that the Respondent’s supervisors were only engaged in fact finding, or that they had no intention of imposing discipline.” From my observation of the witnesses, and carefully reading their testimony, I credit Woolley’s testimony over Rosenberger as I found his testimony reasonable and thoughtful, while I found Rosenberger’s testimony exaggerated and not believable. Having done so, I find that after denying Rosenberger’s request to have a witness present at the meeting, he told him that their discussion would not lead to discipline and that he wanted to have a one-on-one to clear the air to straighten out any problems that existed between them. More importantly, Rosenberger should have clearly understood that the meeting would not result in disciplinary action being taken against him because he had already received the “written verbal” on February 4 for his actions on February 1 and there is no credible evidence that the February 10 meeting could have resulted in any further “discipline.” Counsel for the General Counsel, in her brief, cites *Bentley University*, 361 1038 (2014), for the proposition that Rosenberger could reasonably believe that the interview might result in discipline. However, that case is distinguishable because the employee in that case had not previously been disciplined and could reasonably believe that it would occur at the following meeting. I therefore recommend that this allegation be dismissed. *NV Energy, Inc.*, 355 NLRB 41 (2010).

The remaining *Weingarten* allegation is that on the following day, February 11, the Respondent, by Phillips, threatened Karelis that it would be futile for employees to invoke their *Weingarten* rights in violation of Section 8(a)(1) of the Act. Although Phillips was a credible witness on other subjects, I found his testimony on the subject of his February 11 conversation with Karelis to be somewhat evasive. More importantly, I found Karelis to be a totally credible witness and credit her testimony that Phillips told her that his supervisors could have conversations with employees without shopping for a supervisor, even if one is asked for, and that he follows the CBA rather than *Weingarten*. Although it is true that the contract permits employees to have a union representative present when they are receiving discipline, that is not coextensive with *Weingarten* rights where they are allowed a representative if they could reasonably fear discipline. I therefore find that Phillips’ statements violate Section 8(a)(1) of the Act.

C. Information Requests Allegations

The complaint alleges that since about February 11, the Un-

ion requested that the Respondent furnish the Union with a list of all QC’s assigned duties and tasks and since April 14, the Union requested that Respondent furnish the Union with four samples of at least five employees tool inventory control sheets on a swing shift from January 2016 to April 2016. It is further alleged that the information requested is necessary for, and relevant to, the Union as the bargaining representative of these employees and that the Respondent delayed in furnishing the requested QC information from February 11 to May 25, and failed to furnish the Union with the requested tool inventory control sheets, in violation of Section 8(a)(1)(5) of the Act.

The Union filed a grievance over the counseling that Rosenberger received for sleeping on the job on February 1. On February 11, the Union sent the Respondent the following information request:

The Union requests the following information for purposes of processing the grievance for the general counseling for Dave Rosenberger. Please provide this information within 14 calendar days.

1. Provide the information and statements that was turned into company.
2. Provide a copy of all disciplines Dave has received.
3. Provide copy of Company policies that address circadian rhythm and fatigue.
4. Provide a copy of violation #29 Table “A” and PAE Policy # 314.
5. Provide a copy of training referencing long term and short term fatigue.
6. Provide a copy of employees start and stop time.
7. A supervisor noticed Dave with his eyes closed making snoring sounds. Supervisor did not take the time to make sure that Dave was ok and talk to him at the time of the incident. The supervisor left an employee in an altered state of conscience atone in a chair. Provide a copy of company safety policy in reference making on the spot safety corrections.
8. Provide a copy of Dave’s statement that he was forced to fill out on the day he found out about the investigation 5 days after the incident and 30 minutes prior to him going home.
9. Provide QC department lunch and break time schedule as allotted in the CBA.
10. Has QC supervision or VVTU site management allowed QCs to sleep during their lunch or break times in the office?
11. Provide a list of all of QCs assigned duties and task.

Phillips testified that he conferred with Respondent’s operations manager in responding to this information request and they concluded that Request 11 was not relevant. Employees (and Rosenberger on the night in question) have different duties day to day and a listing of all QC assigned duties and tasks would not necessarily correlate with what he was doing on February 1. In addition, QC’s job description is on the Respondent’s library, accessible to all employees. Therefore, while answering Requests 1-10, he wrote “Not Relevant” for

Request 11. Union Representative Steve Nichols wrote to Phillips on May 23, again requesting a response to Request 11, stating that the Union believes that it is relevant to the discipline given to Rosenberger. On May 25, Phillips responded, stating: "See attached and below for the information you requested per Item #11." He testified that after consulting again with the operations manager, he "pulled it up off the library and provided it as requested."

The remaining information request concerns employee Christopher Mertes, who was disciplined in April 2016, for losing one of the Respondent's tools. The Union grieved the discipline on April 8, and on April 14 made the following request:

The Union requests the following information for purposes of grievance investigation. Please provide this information no later than 4/18/16.

1. Provide 4 samples of at least 5 employees' tool inventory control sheets on swing shift from January 2016 to April 2016.
2. Provide written statements of interview supervisor John Kautz gave to employee Chris Mertes when he asked him to write a statement covering the matter at hand.
3. Provide documentation that allows site management to deviate from tool policy memo sent by Fred Janneck.

On April 18 Phillips responded to items 2 and 3 with attachments, but for item 1, he wrote: "Not relevant to this employee's inventory. All inventories are separate per jobs, inspections & the day's events. Each are specific in nature." He testified that he didn't believe that it was relevant because each employee is required to do a tool inventory before each shift, after each job and at the end of the shift. He attached Mertes' Tool Control and Inventory Record to his response to the information request. However, he also testified that he gave this requested information to his Operations Manager, David Harvey, who "was going to provide it to the Union rep" although he does not know if it was given to the Union. Karelis testified that different tools are used depending upon the aircraft that they are working on. Raymond Donahue, Respondent's maintenance manager at the facility, testified that he believes that the response to item 1 was provided to the Union within a day or two.

Section 8(a)(5) requires an employer to furnish the Union representing its employees with information that is relevant to the union in the performance of its bargaining responsibilities. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979), and information about terms and conditions of employment of bargaining unit employees is presumptively relevant and must be produced. It is well established that an employer must provide a union with requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Associated General Contractors of California*, 242 NLRB 891, 893 (1979), enf'd 633 F.2d 766 (9th Cir. 1980).

Pursuant to these cases I find that item 11 in the February 11

request and item 1 in the April 14 request are not relevant to the Union's grievances. Rosenberger was disciplined for sleeping on the job on February 1. What the QC assigned duties were, has no relevance to this "discipline" and grievance and it would have no relevance to the ultimate issue of whether he was sleeping during working hours. I also fail to see what relevance item 1 of the April 14 request had to the discipline that Mertes was given for losing a tool. Four samples of five employees' tool inventory control sheets would have no relevance to whether he had actually lost a tool. If the request asked for a listing of the tools that he had at the beginning of the shift and the tools that he turned in at the conclusion of the shift, that would be relevant, and the Respondent provided the Union with his tool sheets for March 26. I therefore recommend that the allegations that the Respondent violated Section 8(a)(1)(5) of the Act by delaying and refusing to furnish the Union with requested relevant information be dismissed.

CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.
3. By disciplinary rules 12 and 19, which I find are overly broad and discriminatory, Respondent violated Section 8(a)(1) of the Act.
4. By saying that the Respondent follows its contract with the Union, rather than the Board's *Weingarten* rule, the Respondent violated Section 8(a)(1) of the Act.
5. The Respondent did not violate the Act as further alleged in the complaint.

THE REMEDY

Having found that the Respondent has violated the Act, I recommend that it cease and desist from engaging in these activities and that it post a notice to employees to that effect. In addition, as I have found rules 12 and 19 to be overly broad and unlawful, I recommend that the Respondent be required to rescind these provisions and notify all of its employees, nationwide, that it has done so and that these two disciplinary rules are no longer in effect.

Upon the foregoing findings of fact, conclusions of law and the entire record, I hereby issue the following recommended⁴

ORDER

The Respondent, PAE Aviation and Technical Services LLC, its officers, agents, successors and assigns, shall

1. Cease and desist from
 - (a) Maintaining overly broad and discriminatory disciplinary rules for its employees.
 - (b) Telling employees that it does not follow the Board's *Weingarten* rights.

⁴ 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.

(c) In any like or related manner, interfere with, restrain, or coerce 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 employees, nationwide, with a revised list of its disciplinary rules, removing rules 12 and 19, and similarly removing these disciplinary rules from its intranet to reflect that rules 12 and 19 have been deleted.

(b) Within 14 days after service by the Region, post at its facility at the Davis-Monthan Air Force Base, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 11, 2015.

(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 Respondent has taken to comply.

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

Dated, Washington, D.C. October 19, 2016

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

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain overly broad or discriminatory disciplinary rules that unlawfully restrict your rights guaranteed by the Act.

WE WILL NOT threaten you that we follow our contract rather than the Board's *Weingarten* rule.

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

WE WILL, within 14 days, rescind rules 12 and 19 of our disciplinary rules, and WE WILL notify our employees, nationwide, that this has been done.

PAE AVIATION AND TECHNICAL SERVICES LLC

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-170401 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.

