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TDY Industries, LLC d/b/a ATI Specialty Alloys and Components, Millersburg Operations *and* United Steelworkers of America, Local 6163. Cases 19–CA–227649 and 19–CA–227650

July 22, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On September 25, 2019, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering brief to the Respondent's exceptions.[1]

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,[2] and conclusions only to the extent consistent with this Decision and Order.[3]

We adopt the judge's finding, for the reasons set forth in her decision, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide information about death benefits paid to beneficiaries under the pension plan in response to the Union's May 25, 2018[4] request.[5] We find it unnecessary to pass on the judge's finding that the Respondent unlawfully failed to provide information regarding the last 30 employees to pass away because this additional finding would not affect the remedy.

For the reasons explained below, we reverse the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing the Union with the information requested on June 12 relating to the qualifications of a newly hired unit machinist.

I. BACKGROUND

The Respondent manufactures specialty alloys and components in 39 locations nationwide, including the ATI Millersburg facility located in Albany, Oregon. It has had a long-standing relationship with the Union as the bargaining representative of its approximately 500 employees at the ATI Millersburg facility.

The parties' collective-bargaining agreement contains an in-house bidding procedure for certain positions, including the Respondent's machinists. Machinists may also attain the position of "A" Machinist by meeting specific training, time, and qualification requirements.

On June 12, Watts filed a grievance with the Respondent's outside counsel Ursula Kienbaum, alleging that the Respondent had denied unit employees promotional opportunities in violation of the collective-bargaining agreement by hiring underqualified machinists from outside the unit. Later that day, Watts emailed Kienbaum requesting information about all the qualifications of a newly hired unit machinist, including his "resume, prior work experience, any prehire testing and results, interview Q&A, transcripts and any other information referenced during the hiring process." Watts also asked about the specifics of the new machinist's position and the related bid notice. Kienbaum responded that she was out of state through the following week and that she would turn to the information request upon her return.

On June 27, 2 days after her return, Kienbaum sent an email with some responsive information, including the new machinist's date of hire, the name of the employee he

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

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

[3] We shall amend the judge's conclusions of law and modify the judge's recommended Order to conform to our findings herein and to the Board's standard remedial language, and in accordance with our recent decision in *Danbury Ambulance Service*, *Inc.*, 369 NLRB No. 68 (2020), and our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

[4] All dates are in 2018 unless otherwise indicated.

[5] However, in affirming the judge's finding of this violation, we do not adopt her finding that the Union failed to meaningfully respond to the Respondent's Human Resources Director of Benefits Terrence Brown's request for clarification about which death benefit the Union was referring to in its information request. Brown had taken over processing the May 25 request after the benefits lead at Millersburg, Hilary Stephens, went on leave. Brown conceded at the hearing that he never asked the Union whether the death benefit at issue related to insurance or the pension plan. Union Grievance Chairperson Aaron Watts also testified that Brown never asked him which death benefit was at issue. The record shows that, on July 17, Brown asked Watts: "Can you please also clarify the 'death benefit' you mentioned [in your email] below? Are you saying there were two recent deaths of active employees, and no benefit was paid to a beneficiary?" Watts responded: "Yes, we are concerned eligible beneficiaries may not be getting their death benefits." Brown's specific question referred to the underlying issue—the reported failure of beneficiaries to receive death benefits—and Watts answered that question. Thereafter, Brown did not indicate that he had any lingering uncertainty about what Watts was referring to or that there was any reason why he could not move forward with the request. In fact, following the July 17 exchange, the Union did not hear from Brown until Watts prompted him on August 15. At that point, Brown said, "I'm still unclear on the issue you mentioned on death benefits, but Hilary [Stephens] and I are happy to investigate further if you could provide more details." Watts replied, "If we could get our information requests fulfilled, I should be able to provide more specifics." Once again, Brown did not respond.

replaced, and a copy of the job posting. She stated that the new hire "is currently training on day shift but will eventually move to the C crew rotation as an A Machinist." Kienbaum then suggested a meeting about the request, stating:

> I do have some concerns about the scope of your request for information relating to [the new machinist's] application and interview materials, and I question the relevance of this information to the Union's deferred ULP charge and the corresponding grievance. I also have confidentiality concerns regarding [the] application and interview materials. If the Union is questioning the department's conclusion that there were no qualified internal bidders, we can discuss that and the Company's basis for going outside to hire an A Machinist. What I can tell you is that [he] graduated with an AAS degree in Machine Tool Technologies from Linn Benton Community College. He did not undergo any pre-hire testing.
>
> . . .[I] would be more than happy to sit down with you to discuss if you have any questions about the internal bidding process, but it would be helpful for me to have a better understanding of the basis for your request for [the] application information before I respond further.

Watts did not express any concerns about the contents of Kienbaum's email.

Between August 8 and 9, Watts and Kienbaum exchanged email messages regarding the grievance, whether it was at Step 1 or Step 2, and revisions to the grievance form. On August 15, after returning from a vacation, Kienbaum emailed Watts stating that she was reviewing the grievance and was updating the grievance form as discussed. On August 17, Kienbaum emailed Watts to schedule pending Step 2 grievance meetings and discuss the grievance about the new hire. Citing her busy schedule, Kienbaum offered to meet the week of September 10, and the meeting took place on September 13.[6] At the meeting, Kienbaum and Watts discussed the new hire's "A" Machinist qualifications and the Union's need for additional information. On September 14 and 17, Kienbaum sent Watts all remaining information: the new machinist's resume and cover letter, additional documentation that the Respondent received demonstrating his machining abilities and testing scores, two letters of recommendation, his final grades for his machine-tool technology degree, and photographs of machining work he had provided with his application. The Union does not contend that any of the information requested has not been provided.

[6] Prior to the meeting, Kienbaum provided Watts the new machinist's "Certificate of Machine Tool."

II. JUDGE'S DECISION

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying providing some of the requested information for more than 3 months. She found that the information was presumptively relevant because it directly related to unit employees, and she noted that the final group of documents provided to the Union were not complex or voluminous and were readily available to the Respondent.

III. ANALYSIS

"When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information will not be furnished." *Regency Service Carts*, 345 NLRB 671, 673 (2005). 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). "An unreasonable delay in furnishing relevant requested information is as much a violation of Section 8(a)(5) as a refusal to furnish the information at all." *CPL (Linwood) LLC d/b/a Linwood Care Center,* 367 NLRB No. 14, slip op. at 4 (2018).

To determine whether requested information has been provided in a timely manner, the Board considers a variety of factors, including the nature of the information sought, the difficulty in obtaining it, the amount of time the employer takes to provide it, the reasons for the delay, and whether the party contemporaneously communicates these reasons to the requesting party. *Safeway, Inc.*, 369 NLRB No. 30, slip op. at 7 (2020); see also *Linwood Care Center*, 367 NLRB No. 14, slip op. at 4–5 (finding 6-week delay in providing requested information about wage increases unreasonable where information was not difficult to retrieve and respondent provided no justification for the delay). A respondent's legitimate confidentiality claims may justify a refusal to furnish or a delay in furnishing otherwise relevant requested information. *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 319–320 (1979). However, "a party refusing to supply information on confidentiality grounds has a duty to seek an accommodation" between the union's needs and the employer's legitimate interests,[7] and a respondent normally must raise any confidentiality claim in its initial response to the information request. *West Penn Power Co.*, 339 NLRB 585, 590 (2003), enfd. in relevant part 394 F.3d 233 (4th Cir. 2005). In *West Penn Power*, the Board found that the respondent did not violate the Act by delaying 6 months before providing relevant, requested information produced in an investigation

[7] *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105 (1991).

into a workplace altercation. 339 NLRB at 590. There, the respondent asserted its confidentiality and privacy concerns in its initial response to the union's request and continued to communicate with the union throughout the 6-month period until it furnished the information while preserving the privacy of those involved. Id. at 589–590.[8]

In this case, Kienbaum raised her relevance and confidentiality concerns in her initial response to Watts's information request.[9] She promptly provided some of the information. She did not flatly refuse to furnish the remaining information, but requested a discussion and possible meeting, to which Watts did not object. She remained in contact with Watts prior to their meeting while she continued working on other grievance-related matters. Following their September meeting, she promptly furnished the remainder of the requested information.[10] Contrary to the judge, the fact that the Respondent ultimately furnished the information does not indicate that Kienbaum's concerns were not legitimate. Further, although the specific confidentiality concerns that she discussed with Watts are not in the record, no party contends that these concerns were baseless. We readily infer that releasing certain information disclosed in application materials that relate to an applicant's experience prior to his employment would reasonably implicate privacy and liability concerns for the Respondent, and we find, therefore, that it was not unreasonable for the Respondent to seek, at minimum, a discussion about the Union's need for some of the requested information. Under the circumstances, the 3-month delay in the timing of the meeting to accommodate Kienbaum's travel and vacation schedule and the resulting delay in providing the information did not violate the Act.

Accordingly, the allegation is dismissed.

AMENDED CONCLUSIONS OF LAW

Delete the judge's Conclusion of Law 2 and renumber the subsequent paragraph accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, TDY Industries, LLC, d/b/a ATI Specialty Alloys and Components, Millersburg Operations, Albany, Oregon, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Cease and desist from

(a) Refusing to bargain collectively with the United Steelworkers of America, Local 6163 (the Union) by failing and refusing to furnish it with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

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

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

(a) Furnish to the Union in a timely manner the information requested by the Union on May 25, 2018.

(b) Post at its Albany, Oregon facility copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or

[8] The Board found that the 6-month delay was not unreasonable because numerous information requests were being processed at the time, the Respondent had legitimate concerns about the confidentiality of the information, and the Respondent continued to communicate its concerns to the union. See also *Dallas & Mavis Forwarding Co.*, 291 NLRB 980, 983–984 (1988) (7-month delay in providing requested information justified by respondent's confidentiality concerns where the parties were in continuous contact over the way the information would be provided), enfd. mem. 909 F.2d 1484 (6th Cir. 1990).

[9] We base our decision solely on Kienbaum's stated concern about confidentiality and privacy, not on her challenge to the relevance of certain information nor on the Respondent's contention that it rebutted the presumption of relevance.

[10] Although there was some back and forth after the meeting about whether the Union had agreed to modify its request, that has no bearing on our decision, as there is no contention that Kienbaum failed to furnish all requested information within 3 days of the meeting.

[11] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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.

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 May 25, 2018.

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

Dated, Washington, D.C. July 22, 2020

John F. Ring, Chairman

Marvin E. Kaplan, 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 refuse to bargain collectively with the United Steelworkers of America, Local 6163 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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

WE WILL furnish to the Union in a timely manner the information requested by the Union on May 25, 2018.

TDY INDUSTRIES, LLC, D/B/A ATI SPECIALTY ALLOYS AND COMPONENTS, MILLERSBURG OPERATIONS

The Board's decision can be found at www.nlrb.gov/case/19-CA-227649 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.

Sarah C. Ingebritsen, Esq., for the General Counsel.
Daniel Adlong, Esq. and *Ursula Kienbaum, Esq.,* for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Portland, Oregon, on June 3, 2019. The United Steelworkers of America, Local 6163 (Charging Party or Union) filed the charges on September 20, 2018,[1] and the General Counsel issued the complaint on January 31, 2019. TDY Industries, LLC, d/b/a ATI Specialty Alloys and Components, Millersburg Operations (the Respondent) filed a timely answer denying all material allegations.

The complaint alleges the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to provide the Union with requested information.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company with an office

[1] All dates are in 2018 unless otherwise indicated.

and place of business in Albany, Oregon, manufactures specialty alloys and components. The parties admit, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. The Respondent and the Union

The Respondent is comprised of two business segments: flat rolled products and high-performance materials and components, referred to as HPMC. The ATI Millersburg facility at issue here is part of the HPMC segment.[2] The Respondent has 39 locations across the United States, with 36 collective-bargaining agreements (CBAs).

At all relevant times, Terrence Brown was the Respondent's director of benefits for approximately 7000 employees across the United States. Hilary Stephens was the process leader of benefits, responsible for insurance benefits matters at the Millersburg facility. She reported to the HPMC benefits manager, which was vacant during the relevant time period. The vice president of operations at Millersburg was Mike Bernard.

The Respondent and the Union have entered into successive CBAs, the most recent effective as of June 1, 2018, with the following unit of employees:

> All employees of Respondent at the Albany facility, excluding office, clerical employees, technical and laboratory employees, professional employees and guards and supervisors as defined in the Act.

The bargaining unit consists of approximately 500 employees.

Aaron Watts has worked for the Respondent since February 1995 and has been the Union's grievance chairperson for about 13 years. In his capacity as grievance chairperson, Watts advises union stewards and works with human resources (HR) on grievances and contract administration. Joseph Eddings, a press operator who has worked for the Respondent since 2007, serves as the local Union's president.

2. Death benefit information request

The CBA covers various employee benefits, some of which survive the employee. A pension plan provides survival benefits. Surviving spouses remain eligible for medical insurance of a retiree, and dependents are entitled to medical insurance for specified time periods following the death of an active employee. The CBA also provides for various types of life insurance that confer a benefit once an employee dies, as well as a disability benefit with an optional benefit available on the employee's death. Other policies, such as an accidental death and dismemberment policy, a 401k, and a business travel accident plan, provide for payment upon an employee's death.

Importantly here, the Respondent oversees administration of a pre-retirement death benefit, which provides for a lump sum payment to a surviving spouse in the event a covered employee or former employee passes away. (GC Exh. 7, p. 15.)[3] The Union learned that a widow of one of its members may not have received this benefit, prompting concern that other members also may not have received it.

On May 25, 2018, Watts sent the following email to Stephens:

> Its (sic) been brought to my attention that we need to audit the death benefits. Is there an easy way to get records on death benefits paid out over the last 10 years? Also the surviving spouse benefits and earned pension benefits after deaths for both active and terminated, as well as retired employees. Please let me know if you have questions, I will work with you best I can. Thanks.

(GC Exh. 2.) Stephens responded the same day, stating, "I'm sure it's possible. Let me see what all I can gather. I'll reach out for specifics if I need anything additional. Is there something not going right? I haven't heard any rumbling on that." Later that evening, Stephens reached out to Brown to ask if the information Watts requested could be easily obtained. Brown responded on May 29, "What is he referring to . . . life insurance, pension or both? It would help if he could point to a few examples we could research." (R. Exh. 2.)

Watts and Stephens met a few times to discuss, among other matters, how best to obtain the information regarding the death benefit. During one such meeting with Eddings also present, Watts showed Stephens the summary plan description (SPD) for the pension plan and showed her where the lump sum death benefit was described within the SPD. Watts and Stephens agreed to start with a snapshot of employees who had passed away and determine whether or not they had received the benefit.

Shortly after this meeting, Stephens was on extended leave tending to her terminally ill husband. In Stephens' absence, Watts spoke to Stephanie O'Connor in HR, who in turn referred him to Brown.[4] On July 12, Watts sent an email to Brown stating that he and Stephens had been working on outstanding issues, including employee years of service, pension credits, 401k questions, and unpaid death benefits. Watts asked if Brown could help facilitate audits Stephens was going to look into performing for "multiple problems" with the initial issues being years of service and death benefits. (GC Exh. 3.)

Brown responded to Watts the same day, stating he was unaware of the specific issues Stephens and he had been working on, voicing his hope that Stephens would return on August 1, and stating he would do some research in the meantime. Watts replied that the Union had been trying to get correct calculations for employees' and retirees' years of service, and he and Stephens had been working together and experiencing some frustration from the benefits center on the matter. With regard to the death benefit, Watts stated:

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[2] The terms "Albany facility" and "Millersburg facility" are interchangeable.

[3] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for the General Counsel's exhibit; and "R Exh." for the Respondent's exhibit. Although I have included some citations to the record, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

[4] O'Connor did not know the details of what Watts and Stephens discussed.

> As for the death benefit, I don't recall ever receiveing [sic] notification when a payment is made. Of recent deaths, we called two. One did not know if a payment was received, the other was told they were not entitled to payment. While we do not agree this spouse was not entitled, we asked for clarification from the company to this effect, and requested records of payment that have been made. This may also benefit from an audit.
>
> Please let me know what other details you may need to look into this further.

Brown responded on July 17 with a question about the years of service issue. He also asked Watts the following two questions: "Can you please also clarify the 'death benefit' you mentioned below?"; and "Are you saying there were two recent deaths of active employees and no benefit was paid to a beneficiary?" Watts responded, in pertinent part, "Yes, we are concerned eligible beneficiaries may not be getting their death benefits." (GC Exh. 3.)

Watts sent a follow-up status check email to Brown on August 15. Brown responded the same day, apologizing for the delay. He clarified the issue with regard to years of service and concluded by stating, "I'm still unclear on the issue you mentioned on death benefits, but Hilary and I are happy to investigate further if you could provide more details." Watts replied, expressing some confusion on the years of service matter, and stating, "I appreciate your willingness to look into the death benefit further. If we could get our information requests fulfilled, I should be able to provide more specifics." Watts perceived Brown was resistant to respond, so he tried to be more clear and asked on September 5, "Who were the last 30 employees to pass away?" (GC Exh. 3; Tr. 30.) He did not receive a response.

3. Michael Marthaller information. request

On June 12, the Union filed a grievance alleging the Respondent had denied promotional opportunities to bargaining-unit employees by hiring underqualified employees from outside to perform machining duties. (GC Exh. 8.) The grievance was filed with Ursula Kienbaum, an outside attorney the Respondent had hired to help with HR matters.

The Union's grievance was based on Watts' belief the Respondent had hired an underqualified employee, Michael Marthaller, to perform in the "A machinist" position. On June 12, Watts sent Kienbaum an email referencing the grievance, and requesting the following information:

> On the recent machinist hired off the street (Michael Marthaller) , please provide all of his qualifications, resume, prior work experience, any prehire testing and results, interview Q&A, transcripts and any other information referenced during the hiring process.
>
> What job, area, shift is he hired for?
>
> Please provide the bid notice for the position which went vacant, resulting in hiring off the street.
>
> We are grieving this hiring action and see it as related to the deferred board charge. We are willing to amend the deferred grievance to include this because the issue is directly related.

(GC Exh. 4.)

Kienbaum responded on June 27, providing the date of hire, shift, position, the name of the person Marthaller was hired to replace, and a copy of the job announcement.[5] Kienbaum expressed concerns about the scope of Watts' request, the relevance to the grievance, and confidentiality concerns regarding Marthaller's application and interview materials. She informed Watts that Marthaller graduated with an AAS degree in machine tool technologies from Linn Benton Community College, and he did not undergo pre-hire testing. Kienbaum offered to discuss any questions Watts had about the bidding process and told him it would help to have a better understanding of the basis for his request for Marthaller's application materials before responding. (GC Exh. 4.)

Kienbaum went on vacation in August and had difficulty getting home due to severe weather. (R. Exh. 3.) On August 17, Kienbaum sent Watts an email informing him she wanted to schedule some step-2 meetings. Kienbaum noted she had back-to-back arbitrations over the next couple of weeks and offered to meet the week of September 10. (R. Exh. 4.)

At some point prior to September 13, Kienbaum provided Watts with Marthaller's certificate of machine tool. On September 13, Watts and Kienbaum discussed Marthaller's qualifications at a grievance meeting, and Watts explained why he requested the information about Marthaller.[6] On September 14, Kienbaum provided Marthaller's resume and cover letter, as well as information about his machining abilities and test scores. (GC Exh. 5.)

On September 17, Watts asked if there was any other information regarding Marthaller, including transcripts. Kienbaum responded, stating, "You didn't ask for his transcript in our meeting—you asked for his resume. Why do you need his transcript now? Does he know that you're asking for all of this information?" Watts replied, reminding Kienbaum he had previously requested all of Marthaller's qualifications. Later that afternoon, he asked if the information could be provided by tomorrow, to include, "Everything the company has on file including but not limited to, any interview Q&A, transcripts, previous work history, tests (that have not yet been provided), any communication with LBCC, letters of recommendation, etc." (GC Exh. 5.)

Later the same evening, Kienbaum emailed Watts, expressing her belief that his request for all of Marthaller's application materials was overly broad, and stating she would need an explanation of relevance before providing additional application material. She attached two letters of recommendation for Marthaller, as well as his final grades for his machine tool technology degree and photographs of the machining work he had provided with his application.

B. Decision and Analysis

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that

[5] Prior to the substantive June 27, response, Kienbaum told Watts on June 12 that she was going out of state for a week and would turn to the information request when she got back. (R. Exh. 1.)

[6] The grievance meetings occurred on roughly a monthly basis. In the mid-September meeting, Eddings and Bernard were present, and grievances other than the one filed regarding Marthaller were discussed.

obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967).

The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co*., 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002).

In relation to information sought during the term of an existing contract, a Union's responsibilities include: (a) monitoring compliance and effectively policing the collective-bargaining agreement, (b) enforcing provisions of a collective-bargaining agreement, and (c) processing grievances. *Am. Signature, Inc*., 334 NLRB 880, 885 (2001). If the information sought relates to the processing of a grievance, (or potential grievance), the legal test is whether the information is relevant to the grievance and the determination of relevancy is made based on a liberal, discovery type of standard. *Acme,* 385 U.S. at 437; *Knappton Mar. Corp.*, 292 NLRB 236 (1988).

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed "so intrinsic to the core of the employer-employee relationship" to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes a legitimate affirmative defense to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000). "If an employer effectively rebuts the presumption of relevance, however, or otherwise shows that it has a valid reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested." *United Parcel Service of America.*, 362 NLRB 160, 162 (2015).

When the requested information does not concern subjects directly pertaining to the bargaining unit, such material is not presumptively relevant, and the burden is upon the labor organization to demonstrate the relevance of the material sought. *Disneyland Park,* supra, at 1257; *Richmond Health Care*, 332 NLRB 1304, 1305 fn. 1 (2000). To determine relevance, the Board uses a "liberal, discovery-type standard" that requires only that the requested information have "some bearing upon" the issue between the parties and be "of probable use to the labor organization in carrying out its statutory responsibilities." *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014); *Postal Service*, 332 NLRB at 636.

1. Death benefit information request

The information request pertaining to the death benefit is presumptively relevant, as the benefit pertains to the terms and conditions of employment for bargaining unit employees, as embodied in the CBA.

The context of this case presents a highly unique situation. Stephens, the individual who was cooperatively working with the Union to respond to the information request, left the workplace under dire emergency circumstances. The position above Stephens was vacant, leaving the response to the information request to Brown, who worked at the national level overseeing 36 collective-bargaining agreements. Brown, who was not involved in the communications between Watts and Stephens about the specific death benefit contained in the SPD, promptly asked Watts to clarify what he meant by the death benefit, as the record shows several benefits are triggered by an employee's death. Even the Union's local president, when asked about a death benefit, mentioned more than one benefit, and his response makes clear the term "death benefit" is vague:

> Q. To your knowledge, are you aware of whether Respondent provides anything you would call a death benefit to unit employees?
>
> A Yes. There's a life insurance benefit that's in the contract—the CBA. And then there's an additional—I guess you'd call it additional death benefit.

(Tr. 104.) I find the Union failed to meaningfully respond to Brown's request for clarification about what "death benefit" the Union was referring to in its information request, thwarting his attempts to comply.

The General Counsel asserts that Stephens' knowledge regarding which benefit the Union was requesting information about should be imputed to Brown. "[I]t is well established that the Board imputes a manager's or supervisor's knowledge of an employee's protected concerted activities to the decisionmaker, unless the employer affirmatively establishes a basis for negating such imputation." *G4S Secure Solutions (USA) Inc*., 364 NLRB No. 92, slip op. at 3 (2016). The evidence of the unique circumstances detailed above establishes a basis for negating the imputation of liability in the wake of Stephens' absence.

That said, the Respondent, without any justification, failed to respond to Watts' follow-up request for the names of the last 30 employees to pass away. Moreover, at least by the time of the hearing, the Respondent knew which death benefit was the subject of Watts' information request. The Respondent's failure to provide the information regarding the last 30 employees to pass away, and the Respondent's failure to provide information about the death benefit in response to Watts' May 25, 2018 request once the confusion subsided, constitute violations of Section 8(a)(5) and (1) of the Act.

2. Michael Marthaller information request

The request for Marthaller's qualifications is clearly relevant to the grievance the Union filed alleging the Respondent had denied promotional opportunities to bargaining-unit employees by hiring underqualified employees from outside to perform machining duties.

"An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Valley Inventory Service*, 295

NLRB 1163, 1166 (1989). "The duty to furnish information requires a reasonable good-faith effort to respond to the request as soon circumstances allow." *Monmouth Care Center*, 354 NLRB 11, 52 (2009), reaffirmed, 356 NLRB 152 (2010); *Good Life Beverage Co*., 312 NLRB 1060, 1062 fn. 9 (1993). When evaluating the promptness of responding to an information request, "the Board will consider the complexity and extent of the information sought, its availability and the difficulty in retrieving the information." *West Penn Power Co*., 339 NLRB 585, 587 (2003). "Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of Section 8(a)(5) inasmuch 'as 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.'" *Woodland Clinic*, 331 NLRB 735, 737 (2000), quoting, *Pennco, Inc*., 212 NLRB 677, 678 (1974).

Here, Kienbaum provided some of the information promptly upon her return to the office following Watts' June 12 request. She waited until September 14, to provide Marthaller's resume and cover letter, as well as information about his machining abilities and test scores. Finally, on September 17, she provided two letters of recommendation and Marthaller's final grades for his machine tool technology degree and photographs of the machining work he had provided with his application. This information was not complex or voluminous, and it was readily available to the Respondent. It should have been provided without incident.

The Respondent cites to *United Parcel Service of America*, supra, to argue that once the employer articulates concerns about an information request and makes an offer to cooperate, the Union may not ignore the employer's concerns or refuse to discuss a possible accommodation even when the requested information is presumptively relevant.[7] But the issue here is one of delay, thus arguments about whether the Respondent had good reason to withhold the information are inapposite. The presumptively relevant information was eventually produced, leading to the conclusion that any confidentiality, overbreadth, or concerns were not in the end legitimate justifications for withholding the information. Moreover, the evidence points to unnecessary delay. Watts clearly included Marthaller's transcripts in his June 12 written request. Yet on September 17, Kienbaum said, "You didn't ask for his transcript in our meeting—you asked for his resume. Why do you need his transcript now?" Watts was not required to repeat his request for the transcript at the subsequent meeting in order to keep it alive.

Put simply, the request should have been responded to when it was made to the best of the Respondent's ability. See *Michigan Bell Telephone Co*., 367 NLRB No. 74 (2019) (7-week delay in responding to simple request unlawful). The Union was not required to wait for a meeting with the Respondent and was not required to narrow its basic request.

Considering the totality of the circumstances, I find the Respondent violated Section 8(a)(5) and (1) of the Act by failing to respond fully to the Union's June 12 information request for more than 3 months.

CONCLUSIONS OF LAW

1. By failing to provide the Union with relevant requested information, the Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By unreasonably delaying providing the Union with relevant requested information, the Respondent has violated Section 8(a)(5) and (1) of the Act.

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

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, my recommended order requires them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Affirmatively Respondent must forthwith furnish the information necessary and relevant to the performance of the Union's duties as the exclusive collective-bargaining representative of Respondent's employees that it unlawfully withheld.

The Respondent will be ordered to cease and desist from refusing to provide relevant information or unduly delaying in providing relevant requested information to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, TDY Industries, LLC d/b/a ATI Specialty Alloys and Components, Millersburg Operations, Albany, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Steelworkers of America, Local 6163 (the Union) by delaying or refusing to furnish it with information that is relevant and necessary to the Union's performance as the collective-bargaining representative of Respondent's bargaining unit employees in its Albany, Oregon facility.

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

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

(a) Within 14 days, provide to the Union an audit of the death benefits paid out over the last 10 years as well as surviving spouse benefits and earned pension benefits for both active and terminated, as well as retired employees.

(b) Within 14 days after service by the Region, post at its Albany, Oregon facility copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the

[7] *United Parcel Service* involved requests, every 10 days, for voluminous detailed information relating to each of 45 drivers in the bargaining unit.

[8] 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.

[9] 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

Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 12, 2018.

(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.

Dated, Washington, D.C., September 25, 2019.

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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT refuse to bargain collectively with the United Steel Workers of America Local 6163 (the Union) as your exclusive collective-bargaining representative by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT refuse to bargain collectively with the Union by failing to respond in a timely manner to the Union's requests for presumptively relevant information.

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

WE WILL provide the Union with an audit of the death benefits paid out over the last 10 years as well as surviving spouse benefits and earned pension benefits for both active and terminated, as well as retired employees.

TDY INDUSTRIES, LLC, D/B/A ATI SPECIALTY ALLOYS AND COMPONENTS, MILLERSBURG OPERATIONS

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-227649 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.

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."