United Parcel Service, Inc. *and* International Brotherhood of Teamsters, Local 804. Case 02–CA–275560

March 28, 2023

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS WILCOX AND PROUTY

On April 27, 2022, Administrative Law Judge Benjamin W. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

This case involves the Union's information request for seasonal employees' phone numbers and/or email addresses and documents reflecting their report times. The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the requested information. The Respondent excepts, primarily arguing that it would be unduly burdensome to provide the requested phone numbers and/or email addresses and that information regarding report times does not exist in the three sources specified in the Union's request. For the reasons explained below, we find the Respondent's contentions without merit, and accordingly affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) as alleged.

Facts

During the peak season of October 15 through January 15 each year, the Respondent United Parcel Service (UPS) hires approximately 10,000 seasonal package helpers at its facilities in Westchester, Long Island, and New York City (excluding Staten Island). The seasonal helpers are unit employees, represented by International Brotherhood of Teamsters, Local 804 (the Union).

Under a Master Agreement between the Respondent and the Teamsters, the Respondent must supply the Union with a monthly list of new hires, including the peak season package helpers, "[i]n order to assist the Local Unions in maintaining current and accurate membership records." The list provides each new hire's name, address, social security number, classification, and other information. It does not provide their email addresses or cell phone numbers. The Respondent's labor relations department receives this information in an Excel file from payroll and forwards the information to the Union.

The Union's director of operations, Joshua Pomeranz, testified that by the start of the 2020–21 peak season, the Union suspected that the Respondent was not paying seasonal helpers properly. Specifically, it suspected that the Respondent was paying seasonal employees starting when they delivered their first package from the truck to a home or office, not when they showed up for work–their report time.

Pomeranz further testified that the Union wanted the seasonal employees' cell phone numbers and email addresses so it could contact them regarding the report time issue, as well as other pay issues and other contract enforcement matters. Because seasonal helpers were a transient group, Pomeranz did not consider regular mail an effective way to contact them.

Therefore, on January 21, 2021,[3] the Union requested the following information from the Respondent:

> 1. The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021 [and]

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

In affirming the judge's findings, we do not rely on the testimony of employee James Spence, who was not employed by the Respondent until after the season for which records were requested.

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language, to limit the geographic scope of the notice-mailing provision to the facilities at issue, and in accordance with our decision in *Paragon Systems, Inc.*, 371 NLRB No. 104 (2022). We shall substitute a new notice to conform to the Order as modified.

In adopting the judge's recommended notice-mailing remedy, we note that the employees involved herein are seasonal and that the Respondent does not maintain a facility to which the employees report. See *All Pro Vending,* 350 NLRB 503, 516–517 (2007) (ordering mail notice for seasonal employees); *Air 2, LLC,* 341 NLRB 176, 176 fn. 2 (2004) (ordering mail notice where employees have no fixed work site), enfd. mem. 122 Fed. Appx. 987 (11th Cir. 2004).

Member Wilcox joins her colleagues in ordering a notice-mailing remedy. In doing so, she notes that there may be potential unreliability in using mailing addresses to contact these seasonal employees, but that the matter is best considered in compliance. Specifically, to the extent that an employee's mailing address is unknown, she suggests electronic distribution of the notice may be particularly appropriate.

[3] All dates are in 2021 unless otherwise indicated.

2. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020-January 15, 2021.

On February 3, 2 weeks after the Union sent its information request, the Respondent's director of labor relations, Warren Pandiscia, emailed Pomeranz, stating that "the company does not have daily sign in sheets, security sign [in] sheets or daily time sheets that reflect reporting times for seasonal employees" and that he "was working on" the request for phone numbers and/or email addresses. Thereafter, Pomeranz emailed the information request to Pandiscia a second and third time, but there was no further communication regarding the Union's request for documents reflecting seasonal employees' report times.

Over the next 6 to 8 weeks, before the Union filed its charge in these proceedings, Pomeranz and Pandiscia exchanged a short series of emails about the request for seasonal employees' phone numbers and/or email addresses. Pandiscia claimed that the Respondent would have to manually go through each of the approximately 10,000 seasonal employees' employment applications to obtain their phone numbers and/or email addresses. As of the hearing, the Respondent had not produced any documents responsive to the Union's information request.[4]

Analysis

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the requested information. Finding the requested information presumptively relevant,[5] the judge rejected all of the Respondent's defenses, including, in relevant part, that it would be unduly burdensome for the Respondent to provide the seasonal employees' phone numbers and/or email addresses and that information regarding seasonal employees' report times did not exist in the three specified sources. The Respondent excepts, largely repeating the arguments that it raised before the judge.[6] For the reasons stated by the judge, and those set forth herein, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by failing to provide the requested information regarding report times.[7]

We also affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the requested phone numbers and/or email addresses, but only for the reasons stated below. Specifically, and contrary to the Respondent's contention, we find that the Union's request was not unduly burdensome. Moreover, even if it was, the Respondent failed to satisfy its duty to bargain in good faith with the Union to reach a mutually acceptable accommodation.

[4] The record contains conflicting testimony on whether Pandiscia told Pomeranz that the reason the Respondent was not providing the phone numbers and email addresses was that it was unduly burdensome to gather the information. Pandiscia testified that he told Pomeranz that the request was "unduly burdensome" and that he had also specifically asked Pomeranz on at least one occasion if he could "minimize the number of employees" in some manner. When Pomeranz was asked whether Pandiscia had ever given him a specific reason for not providing this information, he replied, "I don't believe [Pandiscia] ever gave me a—a specific reason or objection, no." The judge did not make a specific credibility finding but appeared to accept, at least for the purposes of argument, Pandiscia's contention that he had informed Pomeranz that the request would involve going through the 10,000 applications manually.

[5] In affirming the judge's finding that the requested information was presumptively relevant, we correct the judge's statement that the Board has not previously ruled on the presumptive relevance of employees' email addresses. In fact, the Board found email addresses to be presumptively relevant in *Valley Health System, LLC d/b/a Desert Springs Hospital Medical Center,* 369 NLRB No.16, slip op. at 2 fn. 14 & 19 (2020), remanded on other grounds 832 Fed. Appx. 514 (9th Cir. 2020), cited by the judge.

[6] We agree with the judge, for the reasons he states, that there is no merit to the additional arguments the Respondent provides for not furnishing the requested information. Specifically, we find no merit to the contentions that the information need not be furnished because the Union wanted the information to use in arbitration, that the Union waived any contractual wage claim by failing to file a timely grievance, and that the Union sought information beyond the scope of the parties' collective-bargaining agreement. With respect to the waiver contention, however, we do not rely on the judge's citation to *MV Transportation, Inc.,* 368 NLRB No. 66 (2019), or his reference to the "clear and unmistakable" and "contract coverage" standards. The pertinent principle here is that an employer has a statutory duty to furnish information that goes beyond the scope of information that the contract requires it to furnish.

[7] As the judge found, in requesting documents reflecting report times for the seasonal employees, the Union set forth three examples of possible sources of those report times, making clear that the sources specified were nonexhaustive by using "included, but not limited to" language. Thus, we agree with the judge that the Union was not required to modify its request when the Respondent stated that it did not have report times in any of the three sources that were explicitly spelled out, and that the Respondent was not entitled to limit its search for information in this manner. In addition to the reasons stated by the judge, we find that the Respondent's perfunctory response to the Union's request for the information was not sufficient to satisfy its duty under the Act to make a reasonable, good faith effort to respond to the Union's information request. See *Earthgrains Co.,* 349 NLRB 389, 389 fn. 1, 397–398 (2007) (although company did not maintain records that directly set forth the requested information, "the inquiry cannot simply end there"), enfd. in relevant part sub nom. *Sara Lee Bakery Group, Inc. v. NLRB*, 514 F.3d 422 (5th Cir. 2008). Indeed, it is well established that the Respondent was required to "provide the information in its possession, make a reasonable effort to secure any unavailable information, and, if any information remains unavailable, explain and document the reasons for its continued unavailability." *García Trucking Service, Inc.,* 342 NLRB 764, 764 fn. 1 (2004).

It is well established that the employer has the burden of proving that a union's request for information is unduly burdensome. See, e.g., *L.I.F. Industries a/k/a Long Island Fire Proof Door,* 366 NLRB No. 4, slip op. at 1 fn. 1 (2018); *Mission Foods,* 345 NLRB 788, 789 (2005); *Yeshiva University*, 315 NLRB 1245, 1245, 1248 (1994). Even where the search for or production of records would require a substantial expenditure of time and money, the burden of fulfilling the request is not a basis for an outright refusal. *General Aire Systems, Inc*., 371 NLRB No. 120, slip op. at 1 fn. 1, 8 (2022); *Pratt & Lambert, Inc.,* 319 NLRB 529, 529 fn. 1, 534 (1995); *Wachter Construction,* 311 NLRB 215, 216 (1993), enf. denied 23 F.3d 1378 (8th Cir. 1994). Rather, the parties must bargain in good faith as to who shall bear the costs. Id. It is the employer's duty, even if it has "a legitimate claim that a request for information is unduly burdensome," to "articulate those concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation." *United Parcel Service of America,* 362 NLRB 160, 162 (2015); *General Aire Systems,* supra, 371 NLRB No. 120, slip op. at 8 (quoting *United Parcel Service*).

Here, the Respondent asserts that the Union's request for seasonal employees' phone numbers and/or email addresses was unduly burdensome because it would require manually sorting through approximately 10,000 employment applications. However, the Respondent did not provide an estimate of how long it would take to retrieve the requested information or how expensive the process would be. See *Pratt & Lambert, Inc.,* 319 NLRB at 531 (employer demonstrated that two people in two different departments would take 60–80 hours to search records is not basis for refusal, and parties must bargain over who bears costs). Nor did the Respondent put forth specific alternative suggestions for a possible accommodation. Rather, the Respondent's Director of Labor Relations Pandiscia testified that he asked the Union's Director of Operations Pomeranz at least once if there was a way that he could "minimize the number of employees." We find that Pandiscia's communications, without more, fall far short of proving that the Union's request was unduly burdensome or that the Respondent bargained in good faith in order to reach agreement on the scope of and cost-bearing aspect of producing the requested documents.

The facts of this case are readily distinguishable, for example, from circumstances where the Board found that the respondent successfully proved an information request to be unduly burdensome. For example, in *United Parcel Service*, supra, 362 NLRB 160 (2015), the union asked for an extensive list of information in response to a claim that drivers were being forced to work through their lunchtime. The respondent did not simply say that the request was unduly burdensome; it made meaningful efforts to reach an accommodation with the union. At least three to four times, the respondent made specific suggestions for reducing the burdensomeness of the request, such as providing time records for a particular day, a sampling of employees, or for specific drivers who alleged they had missed meal periods. Id. at 161. The Board found that even though the employer's suggested accommodations appeared to be reasonable, the union simply rejected them out of hand and found no Section 8(a)(5) violation. Id. at 163. By contrast, here, the Respondent did not demonstrate that fulfilling the Union's request would require a substantial expenditure of time and money, and the Respondent made no meaningful effort to bargain for a mutually acceptable accommodation with the Union. Unlike in *United Parcel Service*, the Respondent did not put forth any specific alternative suggestions for a possible accommodation. Therefore, we find that the Respondent failed to prove that the Union's request was unduly burdensome or that it made a sufficient effort to reach a mutually acceptable accommodation with the Union.

Accordingly, for all these reasons, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to furnish the Union with the requested information regarding the seasonal employees' phone numbers and/or email addresses.

ORDER

The National Labor Relations Board orders that the Respondent, United Parcel Service, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Brotherhood of Teamsters, Local 804 (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 matter 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) Provide the Union with relevant information relating to the phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020, through January 15, 2021, that the Union requested in its email on January 21, 2021.

(b) Provide the Union with relevant information in its possession relating to report times of all seasonal em-

ployees hired for the period of October 15, 2020, through January 15, 2021, that the Union requested in its email on January 21, 2021.

(c) Make a reasonable effort to secure any unavailable information requested in the Union's January 21, 2021 email and, if that information remains unavailable, explain and document the reasons for its continued unavailability.

(d) Post at its bargaining unit facilities in Westchester, Long Island, and New York City (excluding Staten Island), New York, in English and Spanish, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 2, 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 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. If the Respondent has gone out of business or closed the facilities 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 January 21, 2021.

(e) Within 14 days from the date of this Order, mail copies of the notice marked "Appendix" in English and Spanish, at its own expense, to all current and former seasonal employees employed by the Respondent at its bargaining unit facilities in Westchester, Long Island, and New York City (excluding Staten Island) from October 15, 2020, to January 15, 2021. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 2 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. March 28, 2023

_____
Lauren McFerran, Chairman

_____
Gwynne A. Wilcox, Member

_____
David M. Prouty, 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 International Brotherhood of Teamsters, Local 804 (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.

[8] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

WE WILL provide the Union with the relevant information related to the phone numbers and/or email addresses of all seasonal employees hired for the period of October 15, 2020, through January 15, 2021, that the Union requested in its email on January 21, 2021.

WE WILL provide the Union with the relevant information in our possession relating to report times of all seasonal employees hired for the period of October 15, 2020, through January 15, 2021, that the Union requested in its email on January 21, 2021; make a reasonable effort to secure any unavailable information requested in the Union's January 21, 2021 email; and, if that information remains unavailable, explain and document the reasons for its continued unavailability.

UNITED PARCEL SERVICE, INC.

The Board's decision can be found at www.nlrb.gov/case/02-CA-275560 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.

Nikhil A. Shimpi, Esq. and *Audrey Eveillard, Esq.,* for the General Counsel.

Adam S. Foreman, Esq. (Epstein Becker & Green, P.C.) of Southfield, Michigan, and *Erin E. Schaffer, Esq. (Epstein Becker & Green, P.C.)* of New York, New York, for the Respondent.

Benjamin N. Dictor, Esq. (Eisner Dictor & Lamadrid, P.C.) of New York, New York, for the Charging Party Union.

DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, Administrative Law Judge. The United Parcel Service, Inc. (Respondent or UPS) and the International Brotherhood of Teamsters, Local 804 (Union or Local 804) are parties to a collective-bargaining agreement (CBA). On January 21, 2021,[1] the Union requested that the Respondent provide the following information (Jt. 4):

> 1. The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021. If such employees received their start times through means other than telephonic or electronic communications, . . . provide those document(s) and/or contact information.
>
> 2. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020 through January 15, 2021.

As explained below, the requested information is presumptively relevant as it concerns the wages, hours, and/or other terms and conditions of employment of bargaining unit employees. The General Counsel also made an independent showing of relevance. However, the Respondent has raised the following defenses:

> 1) The Union did not want the information for a grievance but instead for use in the private non-CBA wage arbitrations of two former unit employees.
>
> 2) Certain requested information does not exist and the Union did not modify its request after the Respondent denied the existence of such information.
>
> 3) The Union did not need the information for a grievance because the union waived any contractual wage claim by failing to file a timely grievance.
>
> 4) The Union seeks information beyond the scope of the CBA.
>
> 5) The request for employee email addresses was unduly burdensome.

As explained below, I reject these defenses and find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with requested information which was relevant and necessary to its representational functions.

The Regional Director for Region 2 issued the complaint in this case on December 3. The Respondent filed its answer to the complaint on December 17. The case was tried before me by videoconference on February 1 and 2, 2022.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs filed by the General Counsel, the Respondent, and the Union, I render these

[1] All dates refer to 2021 unless stated otherwise.

FINDINGS OF FACT[2]

JURISDICTION

The Respondent admits that it satisfies the commerce requirements for jurisdiction and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Accordingly, I find that this dispute affects commerce and the Board has jurisdiction pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICE

BACKGROUND

The Respondent is engaged in the worldwide transportation of packages and freight. The Respondent and the International Brotherhood of Teamsters (IBT) are parties to a national master agreement (NMA). (Jt. Exh. 2) Article 1, Section 1 of the NMA describes the following appropriate bargaining unit:

> [F]eeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical, clerks, customer counter clerks, mechanics, maintenance personnel (building maintenance), car washers, United Parcel Service employees in the Employer's air operation, and to the extent allowed by law, employees in the export and import operations performing load and unload duties, and other employees of the Employer for whom a signatory Local Charging Party is or may become the bargaining representative. Employees of CSI and UPS Latin America, Inc. are also covered by this Agreement as specified in the P&D Supplement and the Challenge Air Cargo Supplement, respectively….

The Respondent and Local 804 are parties to a supplemental agreement (SA) to the NMA. (Jt. Exh. 3) The NMA and SA constitute the parties' CBA. Local 804 represents about 8,000 employees of the Respondent in a unit covering Westchester, Long Island, and New York City (excluding Staten Island). (Tr. 111-114)

Joshua Pomeranz has been the director of operations for Local 804 since January 2019. Before that, Pomeranz was in-house counsel for Local 804 from 2011 to 2016. Warren Pandiscia has been a UPS director of labor relations since November 2016. Pandiscia started with UPS as a pre-loader in 1991 and worked his way up to his current position. Pomeranz and Pandiscia have overlapping geographic jurisdiction and often deal with each other on such matters as information requests. (Tr. 111-115, 284-286)

Under the SA, Article 2, Section 6, the Respondent may employ seasonal or peak season employees on an annual basis from October 15 to January 15. (Jt. Exh. 3) One such seasonal employee classification is the peak season package helper (helper). Helpers work in the field with UPS drivers by taking packages from the truck to the door of the delivery location. (Tr. 48, 84) The parties agree that seasonal employees are unit employees. (Tr. 33-34)

The NMA, Article 3, Section 2, requires the Respondent to provide monthly information to the Union regarding new hires. (Jt. Exh. 2) (GC Exh. 5) (Tr. 122-127) The NMA states in relevant part (Jt. Exh. 2):

> Section 2. Union Shop and Dues
> (a) . . . In order to assist the Local Unions in maintaining current and accurate membership records, the Employer will furnish the appropriate Local Union a list of new employees. . . . The list will include the name, address, social security number, date of hire, hub or center to which assigned, shift, and classification or position hired into. The Employer shall also notify the Local Union when the employee is promoted from parttime to full-time. The list will be provided on a monthly basis. . . .

Pandiscia's labor relations department is responsible for sending the Union the monthly new hire report. (R. Exh. 1) The report is generally sent a couple weeks after the month it covers (e.g., the report for February new hires is issued to the Union in mid-March) and contains columns for employee name, social security number, employee ID, home address, hire date, full-time or part-time, and job classification. Labor relations receives this information from the payroll department in an electronic Excel file. Labor relations sorts and filters the information before forwarding it to the Union. The report does not include employee phone numbers or email addresses. (GC Exh. 5) (Tr. 287-294)

The SA, Article 4, Section 1, provides for the posting of employee start times by Thursday of the preceding week. (Jt. Exh. 3) (Tr. 127-128, 149-150)

The SA, Article 18, Section 1, describes the grievance procedure and provides that grievances must initially be submitted to a "supervisor within ten (10) working days after the occurrence of such grievance." (Jt. Exh. 3) Pomeranz testified that, as a practice, the Respondent has not objected to Union wage grievances on grounds of timeliness. Pomeranz noted that, if such a defense were raised and sustained, a wage claim could be filed with an appropriate government agency. (Tr. 256) Although Pandiscia testified that the Respondent can raise a timeliness objection to wage grievances, he struggled to recall an instance when it had. Pandiscia admitted that he prefers to correct wage errors even if they are raised outside the 10 day deadline. Pandiscia noted that "we need to pay our people correctly." (Tr. 395-398)

Amy Goldstein-Melendez is a permanent nighttime warehouse package handler who also worked part-time days as a helper during the 2019 and 2020 seasons. Goldstein-Melendez was notified of her helper shifts by text from an "OMS" (office management specialist). These texts were sent from the personal phones of the OMS. Pandiscia testified that OMS are sometimes designated as "helper coordinators" who oversee

[2] The Findings of Fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent evidence of a fact is trustworthy and not contested, the fact is generally stated without reference to the underlying evidence. In assessing credibility, I rely upon witness demeanor. I also consider the context of witness' testimony, the quality of their recollection, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003).

and communicate with helpers regarding their work hours and location. The Respondent does not designate this task to a specific classification but, instead, appears to have different people communicate with helpers regarding start times and locations on an ad hoc basis. Goldstein-Melendez testified that OMS texts either provided a location and start time or directed her to contact the driver directly to arrange the same. She sometimes arrived before the driver and waited a few minutes for the driver to show up. A helper's start/end times are generally recorded electronically in the field by the helper or the driver on a handheld device. The device can be a DIAD (Delivery Information Acquisition Device), MDA (similar to a cell phone), or cell phone (with an application). (GC Exh. 13) (Tr. 57, 82-87, 95-96, 104, 121, 149, 383-387, 405)

James Spence testified that he worked 1 day for the Respondent as a helper during the 2021 season. At orientation, a supervisor told Spence a driver would contact him for work and text him a time and location to meet. However, the supervisor (not a driver) initially sent Spence a text asking if he was available to work. Spence was not available that day. (GC Exh. 2(b)) On a different day, a driver used his personal cell phone to send Spence a text regarding work. (GC Exh. 2(c)) The driver provided his location on the road and asked Spence to come as quickly as possible. The driver did not provide Spence with a specific time to report. Spence went to the designated location and the driver arrived about 10 minutes later. Spence did not sign a timesheet to indicate his start/end times and does not know how his time was recorded for payroll purposes. (Tr. 47-48, 53-58, 62-69, 73-74, 77)

On February 18, 2020, former Respondent seasonal employees Lalynda Hedges and Zyaire Simmons filed a Fair Labor Standards Act (FLSA) class action lawsuit alleging that UPS failed to pay proper minimum, regular, and overtime wages. (R. Exh. 3-6) The complaint, filed in federal district court, represents that Hedges was employed by the Respondent "from November 1, 2019 to January 14, 2020." The complaint further represents that Simmons was employed by the Respondent "from October 2018 to January 2019, and again from late October 2019 to late December 2019." (R. Exh. 3.) Pandiscia testified that he had no reason to doubt the accuracy of these dates. (Tr. 351) The plaintiffs were represented in this lawsuit by attorneys in law firms that represent the Union in other matters. (Tr. 199) (R. Exh. 3-6)

On June 16, 2020, the Union filed a grievance regarding "Acknowledgement of Peak Season Hiring Policy" agreements the Respondent required seasonal employees to sign. (R. Exh. 9) These agreements required seasonal employees to pursue employment related statutory violations, including wage and hour allegations, in private arbitrations on a non-class basis. The agreements were "intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration . . .." (R. Exh. 4, Exhibit A, ¶ 2) (Tr. 215-217, 249-252, 305-306)

On August 4, 2020, a U.S. district court judge dismissed the FLSA lawsuit filed by Hedges and Simmons on the grounds that the parties had entered into agreements to arbitrate claims arising under the FLSA. (R. Exh. 6) Thereafter, Hedges and Simmons commenced individual wage arbitrations against UPS at the American Arbitration Association (AAA). (Tr. 317) (R. Exh. 4)

Pomeranz testified that wage theft has been an ongoing concern since he joined the Union in 2011. When Pomeranz assumed his current office in January 2019, the Union began investigating the matter. Pomeranz testified that, by about the start of the 2020-2021 peak season, the Union suspected, but had not confirmed, that UPS was not posting seasonal employee start times and was not paying seasonal employees correctly. In particular, the Union was concerned that helpers' start times were being recorded on a DIAD when the employee first delivered a package and not upon arriving for work. (Tr. 235-245, 258-263, 413-415)

Pomeranz testified that, to investigate the matter, the Union wanted to obtain from the Respondent the report times of 2020-2021 seasonal employees. Pomeranz further testified that the Union wanted to obtain from the Respondent the phone numbers and email addresses of such seasonal employees to contact them regarding this and other contractual issues, including pay issues, the posting of start times, the provision of proper uniforms, and sanitary/safety conditions. Pomeranz testified that it was important for the Union to obtain employee contact information other than mailing addresses (provided in the monthly new hire lists) because physical addresses were not an efficient way to communicate. Pomeranz noted that seasonal employees tend to be transient minimum wage workers who do not necessarily stay at a particular address for long (rendering mailing addresses quickly stale). Pomeranz also noted that the Union has little or no access to helpers because they work on the road. (Tr. 132, 158-163, 235-245, 258-263, 413-415)

The Information Request

On January 21, Pomeranz emailed the following information request to Pandiscia (GC Exh. 6) (Jt. 4) (Tr. 129-132):

> Please provide the following information by Monday, February 8 so the Union can complete its investigation and prepare for any subsequent hearing involving the Company's violation of the CBA in regards to the [2020-2021 seasonal employees.] If any part of this request is denied or if any material is unavailable, please provide whatever items are available as soon as possible, which the Union will accept without prejudice to its position that it is entitled to all documents, reports, or other sources which contain the requested information called for in this request. If you have a problem with providing any of these items, please contact the Union representative making the request regarding the difficulty immediately and in writing. This request is made without prejudice to the Union's right to file subsequent requests.
>
> The Union reserves the right to take all steps necessary to enforce its right to this information, including but not limited to the right to raise a point of order at any subsequent step in the grievance procedure, ask for an appropriate inference at any subsequent step in the grievance procedure and/or protest any lack of cooperation to the appropriate governmental agency in order to enforce the Union's right to this information.

Requested Information

1. The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021. If such employees received their start times through means other than telephonic or electronic communications, please provide those document(s) and/or contact information.

2. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020 through January 15, 2021.

In a February 3 email to Pomeranz, Pandiscia stated, "[t]he company does not have daily sign in sheets, security sign [in] sheets or daily time sheets that reflect reporting times for seasonal employees. I am working on the first part." (GC Exh. 7) Pandiscia testified that daily sign-in sheets and security sign-in sheets do not reflect report times. Pandiscia further testified that time sheets or cards are purged from the system after 2 weeks. More generally, Pandiscia testified that the Respondent does not record employee report times if the employee arrives early for work before a scheduled start time. However, Pomeranz testified that he has seen payroll records in which employees were paid overtime because a DIAD entry reflected that the employee arrived and started work early. (Tr. 326-328, 404-405, 443)

The Respondent does not deny it has the phone numbers and email addresses of seasonal employees. (Tr. 265) However, Pandiscia claimed he would need to request the employment applications of those employees to obtain their email addresses and phone numbers. Pandiscia did not believe this was viable because, during the 2020-2021 peak season, the Respondent employed over 10,000 seasonal employees. (Tr. 330) However, in 2019, the Respondent produced to the Union over 30,000 pages of information, including cell phone numbers, regarding seasonal employees. (Tr. 151-154, 267, 422-425) (GC Exh. 14)

Pandiscia testified that, at some point between his February 3 email and certain March emails (described below), he spoke to Pomeranz about the Union's information request. During this call, Pandiscia told Pomeranz the request for phone numbers and emails was unduly burdensome. (Tr. 330-331)

On March 9, Pomeranz and Pandiscia had the following email exchange regarding the seasonal employee information request (GC Exh. 8):

> Pomeranz (10:05 a.m.): I am following up on some of the outstanding information requests today. I do not believe you ever responded to this one in any way. Do you intend to respond or provide the requested information?
>
> Pandiscia (10:33 a.m.): I believe I did respond. I am on vacation this week. I will follow up when I return next week.
>
> Pomeranz (10:54 a.m.): OK. Maybe you responded to someone else because I never saw a response. . . .

On March 16, Pomeranz resent the original information request to Pandiscia, which led to the following email exchange (GC Exh. 9):

> Pandiscia (March 16 at 5:43 p.m.): I appreciate you resending the request. What is this in reference to? Is there a grievance associated with the request?
>
> Pomeranz (March 16 at 6:37 p.m.): Yes. It is relating to the ongoing wage theft and separate agreements [UPS] makes with seasonal employees.

On direct examination, Pandiscia testified that he believed this email from Pomeranz concerned the Hedges/Simmons wage arbitrations. (Tr. 333-334, 342) According to Pandiscia, during a subsequent phone call, Pomeranz admitted he wanted phone numbers and email addresses to contact employees about the Hedges/Simmons wage cases. (Tr. 337) Pandiscia claimed he told Pomeranz, during this call, that the request for contact information was voluminous and Pandiscia had "to go through the legal discovery route." (Tr. 335–336.)

On cross examination, Pandiscia testified that Pomeranz admitted the requested information "was in relation to the wage and hour suit. So I told him that he had to go through the legal discovery process, in that case, to get that information." (Tr. 358) When Pandiscia was asked how the information could be used in a "suit" that had been dismissed, he testified that Pomeranz "didn't question me on my response[.]" (Tr. 359) Pandiscia was also asked how information for the 2020-2021 peak season could be used in the arbitrations since Hedges and Simmons did not work that season. Pandiscia indicated that the Union previously attempted to incorporate old grievances into new ones "to cover up the fact that they failed to file timely." (Tr. 352–353.) Pandiscia did not indicate that this Union strategy was unsuccessful. (Tr. 360–362.)

Pomeranz denied he told Pandiscia the requested information was for a lawsuit or legal proceeding and denied Pandiscia told him to use the discovery process to obtain it. Pomeranz testified that he would have recalled and memorialized in writing a "ridiculous" comment that the Union should "use the discovery process in a case to which the Union was not a party, to gather information which was not relevant to those individual arbitrations . . .."[3] (Tr. 431-433)

On March 17 and April 7, Pomeranz emailed certain outstanding information requests to Pandiscia, including the January 21 request regarding seasonal employees. (GC Exh. 10(a) & 10(c)) On April 7, Pandiscia responded as follows (GC Exh. 10(e)):

> I am not refusing to provide information. As you aware, L804 has sent us numerous requests. I am working on them[.]

[3] I credit Pomeranz. I agree that it would have been memorable had Pandiscia directed a non-party union to obtain, through pre-arbitration discovery, information covering a period not at issue in the arbitration. Pandiscia's recollection also seemed lacking as he confused and conflated the lawsuit and arbitrations. Pandiscia ultimately testified that Pomeranz admitted the information "was in relation to the wage and hour suit," even though the "suit" had been dismissed. Pomeranz appeared more confident in his recollection and his explanation for that confidence made sense.

> I do not have direct access to the information. I cannot give you a specific date of when I will receive the information.

However, on April 12, Pandiscia again responded to Pomeranz's April 7 email and stated, "Please check your emails. These requests were responded to." (GC Exh. 11) By email the same day, Pomeranz denied he received any response. (GC Exh. 11)

As of the hearing, the Respondent had not produced any documents responsive to the Union's January 21 information request regarding seasonal employees. (Tr. 144, 148)

ANALYSIS

The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the following information:

> 1. The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021. If such employees received their start time through means other than telephonic or electronic communications, . . . provide those document(s) and/or contact information.
>
> 2. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020 through January 15, 2021.

The 8(a)(5) Duty to Produce Requested Information

As part of the duty to bargain in good faith, an employer must provide the union with requested information that is relevant and necessary to its representational duties. *N.L.R. B. v. Acme Industrial*, 385 U.S. 432, 435–436 (1967); *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Information relating to the wages, hours, and other terms and conditions of employment of unit employees is presumptively relevant and must be furnished unless the employer rebuts that presumption. *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011); *North Star Steel Co.*, 347 NLRB 1364 (2006). "A union's request for presumptively relevant information is presumed to be in good faith unless the contrary is shown." *Grinnell Fire Protection Systems Co.*, 332 NLRB 1257, 1258 (2000). See also *Island Creek Coal Co.*, 292 NLRB 489 (1989). If a request is not presumptively relevant, the Board uses a liberal discovery-type standard whereby it is only necessary to establish the probability that the desired information might be relevant and of use to the union in carrying out its statutory responsibilities. *North Star Steel Co.*, 347 NLRB 1364 (2006), citing *N.L.R.B. v. Acme Industrial*, 385 U.S. 432 (1967).

The Requested Information is Relevant

The information at issue here is presumptively relevant since it relates to the wages, hours, and other terms and conditions of employment of unit employees. The Respondent concedes that the Board has found names, mailing addresses, and telephone numbers to be presumptively relevant, but notes that the Bord has not applied the presumption to email addresses. See *Valley Health Sys., LLC*, 369 NLRB No. 16, slip op. 1 (fn. 14) and 19 (2020). The Respondent offers no explanation why email should be treated differently than other contact information and I see none. Unions often need to contact large groups of employees about grievances, negotiations, and other matters pertaining to representation. Emails are often more effective than the phone or "snail-mail" at reaching large numbers of employees at once. Accordingly, I find that the email addresses of unit employees are presumptively relevant.

Beyond this presumption, the specific circumstances suggest relevance. The Union identified pending contractual matters which it was investigating and wanted to discuss with seasonal employees. Seasonal employees are numerous (estimated by Pandiscia to be about 10,000 in the 2020-2021 season) and contacting them in mass by email would likely be of particular importance. Pomeranz further testified that phone calls were a more efficient means of communicating than mailing addresses because low wage seasonal employees are often transient (rendering mailing addresses quickly stale). Pomeranz also noted that the Union has limited access to helpers because they work on the road. These Union concerns easily satisfy the Board's liberal standard of relevance to justify its request for emails and phone numbers.

As for report times, the Respondent essentially claims that such report times are irrelevant because employees are paid from the time they are scheduled to begin work (not their report times if they arrive earlier). However, this would not be so if a helper, like Spence, was simply told to meet a driver as quickly as possible. In that event, the report time is the scheduled time. Further, the evidence does not indicate that the Respondent actually maintains the scheduled times which are texted to helpers from the personal cell phones of various people on an ad hoc basis. Rather, the evidence indicates that the Respondent pays helpers on the basis of their perceived start times as electronically recorded by handheld device. Pandiscia admitted that some of those helpers were likely paid from the time their first delivery was recorded on the DIAD rather than their actual start time. Thus, the Union had reason to suspect that seasonal employees were not being paid correctly and to investigate the matter by requesting their report times.

The Respondent's Defenses

Having made a prima facie determination that the requested information is relevant, I address below the five defenses raised by the Respondent. The first three essentially seek to rebut the presumption and showing of relevance. The fourth is an argument based on the CBA. The fifth is a claim of undue burden. I reject these defenses.

> 1. The Union did not want the information for a grievance but instead for use in the private non-CBA wage arbitrations of two former unit employees.

The Respondent contends it did not need to produce information the Union only wanted for use in the Hedges/Simmons arbitrations. The Respondent makes this claim even though Pandiscia could not articulate how the Union would use information regarding the 2020-2021 peak season in wage arbitrations brought by employees who did not work that season. Further, the Respondent appears to presume that Hodges and

Simmons would not have been able to obtain the information themselves in discovery in advance of the arbitration hearing. That is not necessarily true in statutory employment arbitrations. See *Cole v. Burns International Security Services*, 105 F.3d 1465, 1480 and fn. 7 (D.C. Cir. 1996). Accordingly, I reject the Respondent's assertion that the Union wanted the information for use in these arbitrations and would deny this defense on that basis alone.[4] However, this defense is invalid for additional reasons.

Even if the Union did seek the information for use in the Hedges/Simmons arbitrations, the Board has long held that "where a union's request for information is for a proper and legitimate purpose, it cannot make any difference that there may also be other reasons for the request or that the data may be put to other uses." *Associated General Contractors of California*, 242 NLRB 891, 894 (1979), citing *Utica Observer-Dispatch v. N.L.R.B.*, 229 F.2d 575 (2d Cir. 1956). As noted above, the evidence reflects that the Union had valid reasons for requesting the information.

Nevertheless, the Respondent cites *California Nurses Association*, 326 NLRB 1362 (1998), which held that an employer was not entitled to obtain from a union the names of witnesses the union intended to call at an arbitration hearing. In refusing to find a violation, the Board stated that "it is well settled that there is no general right to pretrial discovery in arbitration proceedings." Id. The Respondent's reliance on this case has at least two deficiencies.

First, the Board's decision in *California Nurses Association* is a legal outlier. The Board has held in several cases before and after *California Nurse Association* that a union can obtain information after a grievance is filed for use in an arbitration proceeding. See *Fleming Cos.*, 332 NLRB 1086, 1094 (2000) cited with approval in *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1353 (2010); *Jewish Federation Council of Greater Los Angeles*, 306 NLRB 507 fn. 1 (1992); *Chesapeake & Potomac Telephone Co.*, 259 NLRB 225, 227 (1981) (cases cited therein) enfd. 687 F.2d 633 (1982). More importantly, in *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 568 (1967), the Supreme Court held that an employer must produce information without "await[ing] an arbitrator's determination of the relevancy of the requested information . . .." The Supreme Court observed that this "in no way threatens the power which the parties have given to the arbitrator" and, in fact, is "in aid of the arbitral process." Id. at 569.

Second, here, the Respondent did not deny the information request on the grounds that providing it would undermine the arbitration process by adding discovery to a proceeding that had none. Rather, Pandiscia testified that he declined the information request, in part, because he believed the information *was available* in discovery. Indeed, unlike in *California Nurse Association*, it is not well settled that there is no pretrial discovery in AAA statutory employment arbitration proceedings (as opposed to labor arbitrations that arise under the grievance-proceeding of a collective-bargaining agreement). See *Cole v. Burns International Security Services*, 105 F.3d 1465, 1480 and fn. 7 (D.C. Cir. 1996).

Finally, in addition to all of the above, I do not find that the Union's request for information would be invalid even if it were made solely for the purpose of obtaining information for use in the Hedges/Simmons wage arbitrations. The Supreme Court has identified certain litigation expenses among the representational costs a union can require unit employees to pay pursuant to a union security clause. *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984) (Railway Labor Act case applied to the NLRA in *Communications Workers of America v. Beck*, 487 U.S. 735, 746-747 (1988)). Such representational litigation includes "disputes arising in the bargaining unit" and "any other litigation before agencies or in the court that concerns bargaining unit employees and is normally conducted by the exclusive representative." Id. Here, the Hedges/Simmons wage claims involved "disputes arising in the bargaining unit." Further, the arbitrations were brought in lieu of court litigation as a result of arbitration agreements the Respondent required seasonal employees to sign and unions routinely pursue wage arbitrations on behalf of unit employees. A request for information for use in arbitrations that fall within the Supreme Court's definition of representational litigation must be relevant to the Union's representational duties.

2. Certain requested information does not exist and the Union did not modify its request after the Respondent denied the existence of such information.

The Respondent contends that the Union was required to modify its information request after, on February 3, Pandiscia informed Pomeranz that "[t]he company does not have daily sign in sheets, security sign [in] sheets or daily time sheets that reflect reporting times for seasonal employees." The Union had no such obligation. The Union requested "[a]ll documents reflecting report times for all seasonal employees, *including but not limited to* Daily Sign in Sheets, security sign in sheets, and daily time sheets . . .." (emphasis added) The Union included in its request three nonexhaustive examples of documents which might reflect report times. However, the Union did not limit its request to those documents and the request was clear in seeking "all documents reflecting report times." The Respondent was not relieved of its duty to search for and provide whatever documents it possessed simply because it claimed that some documents did not or no longer exist.

And while it is true that the Respondent need not and cannot produce information that does not exist, the evidence does not indicate that the Respondent looked for all potential sources of seasonal employee report times other than the sources suggested by the Union. The Respondent was not entitled to limit its search for information in this manner.

3. The Union did not need the information for a grievance because the union waived any contractual wage claim by fail-

[4] The Respondent claims the Union's motive is demonstrated by its alleged failure to file a timely grievance and the timing of the request (two weeks after Hedges/Simmons filed for arbitration). However, as discussed below (defense no. 3), the Respondent did not prove that any wage grievance would be untimely. Further, the information request was submitted 6 days after the close of the 2020-2021 peak period, which would allow the Union to obtain information regarding all seasonal employees who worked that season. (Tr. 235) Thus, the timing was not suspicious.

ing to file a timely grievance.

The Respondent has asserted that the Union was required to file a written grievance when it suspected UPS of wage theft in October 2020 for such a grievance to be timely under the contractual deadline in the SA, Article 18. According to the Respondent, "by the time the Union filed the information request, with a return date of February 8, 2021, the Union had already waived any claim under the contract that UPS's pay practice with regard to 2020-2021 peak season employees violated the contract."[5] R. Br. p. 11.

The Respondent did not prove that any grievance filed by the Union would be untimely. Pomeranz testified that, by the start of the 2020-2021 peak season in October 2020, the Union suspected but had not confirmed that the Respondent was not paying seasonal employees for all the time they worked. Under SA, Article 18, the Union must file a grievance "ten (10) working days after the occurrence of such grievance." However, since the Union had not yet confirmed the existence of the grievance, it was not operating under a deadline to file it. Further, even if a contractual deadline did apply, it may have been tolled *because* the Respondent failed to provide information relevant to the Union's investigation of the matter. See *Postal Service*, 345 NLRB 409, 424 (2005); *Garrett Railroad Cr & Equipment, Inc.*, 289 NLRB 158, 161-162 (1988). Finally, the Respondent can only object to a grievance on the grounds of contractual timeliness while the arbitrator rules on that objection. Pandiscia indicated that the Union has attempted to combine old grievances with new ones "to cover up the fact they failed to file timely," and did not indicate this Union strategy has been unsuccessful. Since we do not know how an arbitrator would rule on these matters, the Respondent has not satisfied its burden of rebutting the prima facie presumption and showing of relevance.

The Respondent also failed to prove that the requested information would be useless if a wage grievance disclosed by the information was, in fact, untimely. Pandiscia admitted that he attempts to adjust wage errors even if a grievance regarding the error would be untimely. Pomeranz testified that the Respondent has not raised timeliness as a defense to wage grievances and Pandiscia struggled to recall an instance when it had. Thus, the Union could reasonably believe the information would be useful to the extent it disclosed wage errors which the Respondent would correct regardless of the timeliness of a potential grievance.

4. The Union seeks information beyond the scope of the CBA.

The Respondent contends that the NMA, Article 3, Section 2, requires only that it provide specific information regarding employees, which does not include phone numbers and email addresses. The provision provides in relevant part:

> In order to assist the Local Unions in maintaining current and accurate membership records, the Employer will furnish the appropriate Local Union a list of new employees. . . . The list will include the name, address, social security number, date of hire, hub or center to which assigned, shift, and classification or position hired into. . . . The list will be provided on a monthly basis.

The "Board has held that the inclusion of a union's right of certain specified information in a collective-bargaining agreement does not constitute a waiver of its more general right under the Act to receive relevant information." *United States Postal Service*, 364 NLRB No. 27, slip op. 23 (2016) (citing cases). That is the case here. I note also that although the applicable contract provision provides for the disclosure of information "to assist the Local Unions in maintaining current and accurate membership records," a union must do more than maintain membership records. A union must represent its members subject to a duty of fair representation. The CBA contains no language suggesting that the Union intended to limit its statutory right to do so by requesting additional information.[6]

5. The request for employee email addresses was unduly burdensome.

The Respondent contends that the Union's request to gather the email addresses of about 10,000 employees was unduly burdensome because it would have had to search one by one through each employee's personnel folder. Pandiscia testified that he would need to obtain such email addresses from each employee's employment application.

Once "requested information is found relevant, 'the onus is on the employer to show that the production of the data would be unduly burdensome.'" *L.I.F. Industries*, 366 NLRB No. 4 (2018) quoting *Mission Foods*, 345 NLRB 788, 689 (2005). This burden requires a showing that "the request would be prohibitively expensive in time, labor and resources to fulfill." *Goodyear Atomic Corp.*, 266 NLRB 890, 891 (1983). UPS is a large company and it made no showing that it did not possess such resources. In fact, in 2019, the Respondent produced over 30,000 pages of information, including cell phone numbers, regarding certain seasonal employees.

I note also that the Respondent maintains employee mailing addresses in an electronic payroll database and can produce those addresses to the Union on a monthly basis without difficulty. The Respondent presumably obtains both mailing addresses and email addresses from the same employment applications. The Respondent chooses to spend the time and resources to input the mailing addresses into its payroll database while potentially saving time by not doing the same for email addresses (which it may never have to do). However, the Respondent could input email addresses into its system at the same time. That the Respondent only chooses to input email

[5] The Respondent did not raise this argument as an independent defense. Rather, the Respondent claimed that the Union's alleged failure to file a timely grievance was evidence of its alleged desire to obtain the information for use in the Hedges and Simmons arbitrations. However, to be thorough, I address it as a separate defense because it could be viewed as such.

[6] It is not clear whether a contractual defense to an information request allegation must be evaluated under the contract coverage or clear and unmistakable waiver standard. See *MV Transportation*, *Inc,* 368 NLRB No. 66 (2019); *McClaren Macomb*, 369 NLRB No. 73 (2020). In *McLaren Macomb*, the Board sustained a judge's use of the clear and unmistakable wavier standard in evaluating such a defense. Regardless, the Respondent's defense fails under both standards.

addresses in mass when a statutory disclosure obligation is triggered does not mean that doing so is unduly burdensome.

Based upon the foregoing, having found that the requested information is relevant and having rejected the Respondent's defenses, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with requested information which is relevant and necessary to its representational functions.

CONCLUSIONS OF LAW

1. The Respondent, United Parcel Service, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The following employees of the Respondent have been exclusively represented by the Union and constitute a unit appropriate for the purposes of collective bargaining:

> [F]eeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical, clerks, customer counter clerks, mechanics, maintenance personnel (building maintenance), car washers, United Parcel Service employees in the Employer's air operation, and to the extent allowed by law, employees in the export and import operations performing load and unload duties, and other employees of the Employer for whom a signatory Local Charging Party is or may become the bargaining representative. Employees of CSI and UPS Latin America, Inc. are also covered by this Agreement as specified in the P&D Supplement and the Challenge Air Cargo Supplement, respectively....

3. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union with the following information:

> a. The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021. If such employees received their start times through means other than telephonic or electronic communications, . . . provide those document(s) and/or contact information.
>
> b. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020 through January 15, 2021.

THE REMEDY

Having found that the Respondent, United Parcel Service, Inc., engaged in an unfair labor practice, I shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with relevant requested information, as described herein, the Respondent shall search for and furnish the Union with responsive information to the extent it exists.

The Respondent will be ordered to post, in English and Spanish, the notice attached hereto as "Appendix." I will also order the Respondent to, at its own expense, copy and mail the notices to all seasonal employees employed during the 2020-201 peak season as they work on the road (if they return to work for the Respondent at all).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, United Parcel Service, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide the Union, International Brotherhood of Teamsters, Local 804, with requested information that is relevant and necessary to the Union's role as the exclusive collective bargaining representative of the following appropriate unit:

(b) [F]eeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical, clerks, customer counter clerks, mechanics, maintenance personnel (building maintenance), car washers, United Parcel Service employees in the Employer's air operation, and to the extent allowed by law, employees in the export and import operations performing load and unload duties, and other employees of the Employer for whom a signatory Local Charging Party is or may become the bargaining representative. Employees of CSI and UPS Latin America, Inc. are also covered by this Agreement as specified in the P&D Supplement and the Challenge Air Cargo Supplement, respectively….

(c) In any like or related manner interfering, 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) Immediately search for and provide the Union with the following information:

> 1. The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021. If such employees received their start times through means other than telephonic or electronic communications, . . . provide those document(s) and/or contact information.
>
> 2. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020 through January 15, 2021.

(b) Post at its bargaining unit facilities in Westchester, Long Island, and New York City (excluding Staten Island), in English and Spanish, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's

[7] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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 addition to the 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. In addition to the physical posting of paper notices and any distribution of electronic notices, the Respondent shall duplicate and mail, at its own expense, copies of the notice to all current and former seasonal employees employed by the Respondent from October 15, 2020 to January 15, 2021. 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, copies of the notice to all current and former unit employees employed by the Respondent at any time since January 21, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 27, 2022

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to provide the Union with requested information that is relevant and necessary to the Union's role as your collective bargaining representative, including the following information:

The phone numbers and/or email addresses for all seasonal employees hired for the period of October 15, 2020 through January 15, 2021. If such employees received their start times through means other than telephonic or electronic communications, . . . provide those document(s) and/or contact information.

2. All documents reflecting report times for all seasonal employees, including but not limited to Daily Sign in sheets, security sign in sheets, and daily time sheets, for all seasonal employees for the period of October 15, 2020 through January 15, 2021.

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

WE WILL immediately search for and provide the Union with the information it requested.

UNITED PARCEL SERVICE, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-275560 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.