Atlantic Veal and Lamb, LLC *and* United Food & Commercial Workers Union, Local 342. Case 29–CA–272677

February 22, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND PROUTY

On February 15, 2022, Administrative Law Judge Lauren Esposito issued the attached decision, and, on February 28, 2022, an Errata to her decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

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

We affirm the judge's findings and conclusions that the Respondent violated Section 8(a)(5) and (1) by laying

---

[1] The Respondent excepts to the judge's rejection of its affirmative defense that President Biden's removal of former General Counsel Peter Robb and his temporary appointment of Acting General Counsel Peter Sung Ohr was invalid. The Respondent asserts that neither Acting General Counsel Peter Ohr nor current General Counsel, Jennifer Abruzzo, had the authority to issue and prosecute the complaint. The Board has determined that such challenges to the authority of the Board's General Counsel based upon the President's removal of former General Counsel Peter Robb have no legal basis. *Aakash, Inc. d/b/a Park Central Care and Rehabilitation Center,* 371 NLRB No. 46 slip op. at 1–2 (2021), enfd. __ F.4th __ (9th Cir. 2023). In addition, the Fifth Circuit recently rejected a similar challenge to the President 's removal of the former General Counsel. See *Exela Enterprise Solutions, Inc. v. NLRB*, 32 F.4th 436, 441–445 (5th Cir. 2022). Member Kaplan acknowledges and applies *Aakash* as Board precedent, although he expressed disagreement there with the Board's approach and would have adhered to the position that "reviewing the actions of the President is ultimately a task for the federal courts," as the Board concluded in *National Assn. of Broadcast Employees & Technicians—The Broadcasting & Cable Television Workers Local 51*, 370 NLRB No. 114, slip op. at 2 (2021). See *Aakash*, 371 NLRB No. 46, slip op. at 4–5 (Members Kaplan and Ring, concurring); see also *Exela Enterprise Solutions, Inc. v. NLRB*, supra (reaching the same conclusion the Board reached in *Aakash* regarding the President's removal of Robb, but based on de novo review and according the Board's decision no deference).

Further, on December 20, 2021, General Counsel Abruzzo issued a Notice of Ratification in this case approving the continued prosecution of the complaint that states as follows:

> The prosecution of this case commenced under the authority of former Acting General Counsel Peter Sung Ohr when the complaint issued on June 9, 2021.
>
> Respondent has alleged that former Acting General Counsel Ohr lacked authority to issue and prosecute the complaint. Specifically, Respondent has alleged that President Biden unlawfully removed former General Counsel Peter B. Robb and unlawfully designated former Acting General Counsel Ohr.
>
> I was confirmed as General Counsel on July 21, 2021. My commission was signed and I was sworn in on July 22, 2021.
>
> Former General Counsel Robb 's term has indisputably now expired. In an abundance of caution, I was re-sworn in on November 29, 2021. After appropriate review and consultation with my staff, I have decided to ratify the issuance of the complaint and its continued prosecution in this case. Those actions were and are a proper exercise of the General Counsel 's broad and unreviewable discretion under Section 3(d) of the Act.
>
> My action does not reflect an agreement with Respondent 's argument in this case or arguments in any other case challenging the validity of actions taken after President Biden removed former General Counsel Robb. Rather, my decision is a practical response aimed at facilitating the timely resolution of the unfair-labor-practice allegations that I have found to be meritorious.
>
> For the foregoing reasons, I hereby ratify the issuance and prosecution of the complaint and all actions taken in this case after the removal of former General Counsel Robb.

Applying *Wilkes-Barre Hospital Co. LLC d/b/a Wilkes-Barre General Hospital*, 371 NLRB No. 55, slip op. at 1 fn. 2 (2022) (full-Board decision; collecting cases), we find that General Counsel Abruzzo's ratification renders the Respondent's argument moot. Member Kaplan acknowledges and applies *Wilkes-Barre* as Board precedent, although he expressed disagreement there with the Board's approach, and he adheres to the views he and Member Ring expressed in that case. See id.

[2] We amend the judge's remedy to provide that backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), rather than with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971).

Further, in accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), we have amended the make-whole remedy and modified the judge 's recommended order to provide that the Respondent shall compensate employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful layoffs, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Finally, we shall modify the judge's recommended Order to conform to the Board 's standard remedial language and in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

Member Prouty would also order that the Board's remedial notice be read aloud to employees by a high-ranking management official in the presence of a Board agent or, at the Respondent's option, by a Board agent in the presence of a high-ranking management official. He finds a notice-reading remedy fully warranted here, where the violations, which included the layoff of six unit employees, occurred amidst bargaining for an initial contract. Member Prouty would additionally require that a copy of the attached notice be distributed to each employee present at the opening of this meeting or meetings, before the notice is read aloud by management or by the Board agent. Such a requirement would facilitate employee comprehension of the notice and enhance the remedial objectives of the notice reading set forth in the Amended Remedy section of this decision. Moreover, in Member Prouty's view, the reading and distribution of the notice should be standard remedies for unfair labor practices found by the Board. See *CP Anchorage Hotel 2, LLC,* 371 NLRB No. 151, slip op. at 9–15 (2022) (Member Prouty, concurring). "By hearing and simultaneously reading the Board's message—together with their coworkers and with representatives of the employer—the employees will be far more likely to appreciate that their employer 's misconduct was illegal and that it can and will be redressed." Id., slip op. at 10.

off six employees on January 29, 2021, without providing the Union with notice and opportunity to bargain regarding the layoffs or their effects, and in the absence of overall impasse in collective-bargaining negotiations. We further affirm the judge's findings and conclusions that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information it requested on December 17, 2020, and January 14, 2021, about the identity and location of the entities that would be producing the product to be distributed by the Respondent, should the Respondent close its production and processing facility.[3] In doing so, we affirm the judge's finding that the relevance of the information sought by the Union should have been apparent to the Respondent under the circumstances, as we further discuss below.

I. BACKGROUND

The undisputed facts are as follows. The Respondent operates a meat processing, production, and distribution facility in Brooklyn, New York.[4] On December 17, 2019, the Union won an election to represent the Respondent's 70 processing and warehouse employees, including wrappers, packers, meat cutters, sanitation, mechanics, maintenance, freezer, shipping, and receiving employees. The Union was certified as the unit's exclusive collective-bargaining representative on April 15, 2020.[5]

In the year following the election, the Respondent advised the Union on at least six occasions, five of which occurred during first-contract bargaining, that it planned to close its processing and production operations and lay off a majority of unit employees.[6] After each proclamation, however, the Respondent either postponed or reversed course.

First, by a letter dated March 27, entitled "Notice of Plant Closure," the Respondent advised the Union that, because of the impact of coronavirus on the restaurant industry, effective April 30, it would permanently "close the processing and production operations" and lay off 38 of the remaining 39 "affected employees."[7] Second, on April 27, at the first negotiation session, the Respondent stated that the closure remained scheduled for April 30. However, the Respondent neither closed its processing and production operations nor laid off any employees on April 30. The record does not reflect that the Respondent advised the Union of its changed plans. Third, in a letter dated May 5, the Respondent, which had not followed through with its previously planned April 30 closure, stated in reply to the Union's April 28 request for information that it still intended to permanently cease production and processing operations sometime after May 30.[8] Fourth, during the May 6 negotiation session, the Respondent repeated its plan that the closure would not take place until or after May 30.[9] Fifth, in a May 12 email response to a May 8 request for information,[10] the Respondent advised the Union that the "expected closure date of the. . .processing and production operations has now been extended from [May 30 to June 30]."[11] Sixth, despite reversing course in the parties' May 27 negotiation session and notifying the Union that it was *not* shutting down its production and processing operations, during the December 17 bargaining session, the Respondent announced, again, that it intended to close production and processing, and there would be layoffs affecting those employees.[12]

In response to the Respondent's December 17 announcement, the Union made the first of the two information requests at issue here. Specifically, it asked the Respondent where the product would be produced and who would be producing it if production and processing

[3] We agree with the judge's rationale for finding that the Sec. 8(a)(5) and (1) request for information complaint allegations were not time-barred under Sec. 10(b) of the Act.

[4] Specifically, at the time of the hearing, the Respondent's operations were as follows: it cut lamb and veal, prepared portions of meat, packaged the meat for distribution, boxed and wrapped the meat, labeled the packages, placed them on pallets and crates, and then loaded them onto trucks for delivery.

[5] All dates are in 2020 unless otherwise noted.

[6] In fact, the Respondent laid off approximately 35 employees between March 16 and March 26, shortly before it first relayed these intentions to the Union on March 27, after the election but before certification. These initial layoffs were not alleged to have violated the Act. The record reveals that the Respondent later recalled some of the laid-off employees in late Spring/early Summer 2020.

[7] The letter provided a timeline for the layoffs—three employees on March 27 and thirty-five employees on April 30—and noted that letters notifying affected employees of the closure and related layoffs had been sent that day.

[8] On April 28, the Union requested information for bargaining over the initial agreement and the effects of the announced layoffs. Among other things, it inquired about whether the Respondent planned to cease operations at the Brooklyn facility on April 30 and, if so, whether it planned to do so permanently; and whether it had other locations at which it processed food and, if so, whether layoffs were occurring there.

In response, the Respondent also advised the Union that the Brooklyn facility is the only location where it processes food and that it does not have employees assigned to any other location.

[9] In light of information the Union received away from the bargaining table, it again inquired about other locations, specifically, in Ohio and Pennsylvania. The Respondent stated that it did not have an Ohio location and that its Pennsylvania facility had closed.

[10] The Union, having recently been advised by the Respondent that the Brooklyn facility would continue distribution despite production occurring elsewhere, requested, among other things, the name of the company or entity from which the Respondent planned to obtain meat products to be distributed from the Brooklyn facility.

[11] The Respondent also noted that "none of the [May 8] requested information directly relates to represented employees' terms and conditions of employment [and, that] being the case, the requested information is not presumptively relevant, and the Union has not made any proffer of relevance." There are no unfair labor practice allegations regarding the May 8 request.

[12] The record does not reflect that the Respondent tied this closure, which it stated would occur in February or March 2021, to the impact of COVID-19 on the restaurant industry or provided the Union with a reason for the layoffs.

were being shut down, given the Respondent's plan to continue its distribution operation. The Respondent's representative replied that he did not know and would find out but claimed that the Union was "not entitled" to that information. The Union disagreed with the Respondent's position that it was not entitled to such information.

At the January 7, 2021 bargaining session, following reports from unit employees about new production and processing machines wrapped in plastic at the Brooklyn facility, the Union inquired about the new machines and requested a status update on the shutdown. Specifically, the Union, in an attempt to determine the Respondent's intent regarding the new machines, asked what the machines would be used for and whether the Respondent would continue production and processing at the Brooklyn facility. The Respondent stated that the new machines were not in use at its Brooklyn facility and that it was still planning to shut down its production and processing operations.[13]

In a letter dated January 14, 2021, the Union made the second request at issue here: it inquired about the entities that would be performing processing and production bargaining unit work. Specifically, the letter stated, "during [bargaining] on December 17, 2020 and again January 7, 2021, [the Respondent indicated that it would shut down] the production portion of the facility. . .which would likely result in more layoffs, however the distribution portion [would continue]." The Union asked the Respondent to "provide details as to what company or companies will be performing the production that is currently taking place on premise once the shutdown is complete as well as where those companies are located."

On January 21, 2021, the parties met for another negotiation session and the Respondent confirmed receipt of the Union's January 14, 2021 request for information and stated that it would respond promptly and in writing.[14] The Union asked for any news about or changes in the Respondent's plan to close production and processing, and lay off employees. The Respondent stated that it had no new information, but it would let the Union know if there were any updates. Approximately one week later, on or about January 29, 2021, the Respondent laid off six bargaining unit employees without notifying the Union prior to the layoffs.[15]

[13] The record does not reflect that the Respondent ever explained the presence of new machinery for operations it was planning to shut down.

[14] The record does not reveal that the Respondent objected to this request or repeated its earlier statement that the Union was not entitled to the information.

[15] These layoffs are the subject of the 8(a)(5) and (1) violation, which we adopt.

II. THE SECTION 8(A)(5) AND (1) REQUEST FOR INFORMATION VIOLATION

A. Applicable Law

Section 8(a)(5) of the Act imposes on an employer the duty to bargain collectively and includes a duty to supply a union, upon request, information that will enable the union to perform its duties as the bargaining representative of unit employees. *Permanente Med. Group, Inc.*, 372 NLRB No. 51, slip op. at 6 (2023) (citing *New York & Presbyterian Hospital v. NLRB*, 649 F.3d 723, 729 (D.C. Cir. 2011)); see also *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). This duty is statutory and exists regardless of whether there is a collective-bargaining agreement between the parties. *American Standard*, 203 NLRB 1132 (1973).

Where, as here, requested information does not pertain to unit employees, it is not presumptively relevant, and its relevance must be established. To demonstrate relevance of nonunit information, the General Counsel must show that either: (1) the union demonstrated relevance of the nonunit information; or (2) the relevance of the information should have been apparent to the employer under the circumstances. *Disneyland Park*, 350 NLRB 1256, 1258 (2007) (citing *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000)); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018–1019 (1979), enfd. in rel. part 615 F.2d 1100 (8th Cir. 1980). The burden of establishing relevance for nonunit information, however, is not "an exceptionally heavy one," rather, the Board uses a "liberal discovery-type standard." *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011); *Acme Industrial Co.*, supra at 437 & fn. 6. Thus, under this standard, "all that is required is a showing of a probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Disneyland*, supra at 1258; see also *United States Testing Co.*, 324 NLRB 854, 859 (1997), enfd. 160 F.3d 14 (D.C. Cir. 1998); *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994).

B. *Discussion*

Applying the above principles, we agree with the judge that the record evidence establishes that the Respondent violated Section 8(a)(5) and (1) by refusing to provide information that the Union requested on December 17, 2020, and January 14, 2021, regarding the identity and location of companies which would be producing the product for distribution in the event that the Respondent closed its production and processing operations, but maintained its distributions operation, at its Brooklyn facility.

In affirming the judge, we agree that the relevance of the information should have been apparent to the Respondent because the circumstances here, discussed below and explained in more detail by the judge, establish that such information would be of use to the Union in

carrying out its collective-bargaining representative duties to: (1) assess the Respondent's claims made in contract negotiations;[16] (2) conduct negotiations, specifically with respect to formulating and responding to bargaining proposals;[17] and (3) effectively aid the Union's efforts to preserve bargaining unit work.[18]

First, the judge correctly found that the information requested by the Union was relevant to assess the Respondent's repeated and shifting claims during negotiations for an initial contract that it would be shutting down its processing and production operations and laying off unit employees. Unit employees' reports to the Union about the arrival of new production and processing machines at the Brooklyn facility and the Respondent's recall of some employees who were laid off in March 2020 appeared to contradict the Respondent's closure plans and further underscore the Union's need to assess and verify the Respondent's claims and, thus, made the information relevant. If the Respondent had identified where the product it planned to distribute would be produced, of course, then its claims in bargaining, would have been more credible, and the Union would have been able to adjust its bargaining approach. Accordingly, we agree that the Union needed the information to assess and verify the Respondent's claims—which Union negotiator Louis Sollicito characterized as "fluid" during the hearing and the judge described as "unreliable"—that it would be utilizing a separate entity to perform work then assigned to a great majority of unit employees. See *Wyman Gordan Pa., LLC*, 368 NLRB No. 150 (2019) (citing *Caldwell Mfg. Co.*, supra, and stating that, "[t]o comply with its duty to provide requested information that is relevant to, and necessary for, a union's performance of its representational duties, an employer must provide information needed by the union to assess claims made by the employer relevant to contract negotiations"). As the judge noted, this information was "particularly critical in the context of [first-time]-negotiations." Without this information, bargaining could not be fruitful in light of the Respondent's ever-changing closure plans, which would severely impact a majority of unit employees. For these reasons, the relevance of the requested information should have been apparent to the Respondent. Having made the information relevant by its assertions during bargaining, the Respondent hardly needed to be told why the Union wanted the information.

We further agree with the judge's second point that the information was relevant so that the Union could formulate proposals and responses in the face of substantial looming threatened changes to the Respondent's overall operations and unit work. For example, the information could shed light on whether, when, and, of course, *where* the Respondent was going to move its new processing and production equipment, and, thus, whether unit employees could move along with the equipment and continue to perform unit work. This basis for relevance should also have been apparent to the Respondent. It required no explanation from the Union for the Respondent to understand the Union's need for information that could help shape its response to the Respondent's plans.

Finally, we agree with the judge that the requested information was relevant to aid the Union in its efforts to effectively preserve bargaining unit work. As the judge noted, "a complete shutdown of production and processing would likely result in the elimination of most of the bargaining unit work" and a majority of the bargaining unit. The Union, as representative of these potentially affected employees, obviously desired to gather information necessary to help it preserve as many bargaining unit jobs as possible. Knowing the identity and location of the entities that would be performing such work, would allow the Union to, for example, bargain over the transfer of the impacted unit employees to a new location. Here, again, the Respondent almost certainly recognized—and it should have been apparent to it—why the Union was requesting the information at issue.

Accordingly, we find, in agreement with the judge, that the relevance of the information should have been apparent to the Respondent under the circumstances and affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union with the information needed for the performance of its collective bargaining duties. *Disneyland*, 350 NLRB at 1258.

C. *Response to Dissent*

Our colleague joins us in finding that the Respondent violated Section 8(a)(5) and (1) when it laid off six bargaining unit employees on January 29, 2021, but dissents from our finding that the Respondent also violated Section 8(a)(5) and (1) by refusing to provide the Union with information regarding the entity or entities that would be

[16] Citing *Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services*, 367 NLRB No. 103, slip op. at 5 (2019), enfd. 957 F.3d 1006 (9th Cir. 2020), and *Caldwell Mfg. Co.*, 346 NLRG 1159 (2006), the judge noted that the Board has found that information regarding non-unit employees may be pertinent to "assess claims made by the employer relevant to contract negotiations."

[17] Citing *Caldwell Mfg Co.*, 346 NLRB 1159 (2006) (finding information relevant given the probability of its usefulness to the union in deciding what proposals to accept and make), *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844, 872 (2001) (finding information regarding plans to subcontract work necessary for the union to prepare for collective bargaining), and *Leland Stanford Junior University*, 262 NLRB 136, 152 (1982), enfd. 715 F.2d 473 (9th Cir. 1983) (finding information relevant where necessary for the union to fashion realistic contract proposals), the judge noted that the Board has determined that information not directly pertaining to bargaining unit employees may be relevant to a union's responsibilities in terms of conducting negotiations, specifically with respect to formulating and responding to bargaining proposals.

[18] Because we adopt the judge's finding that the relevance of the requested information should have been apparent to the Respondent, we find it unnecessary to pass on whether the Union has also independently demonstrated the relevance of the information.

providing the Respondent with product for distribution. The root of our disagreement stems from the application of *Disneyland*'s relevance standard, which requires that a union demonstrate "a reasonable belief supported by objective evidence that the requested information it seeks is relevant, *unless* the relevance of the information should have been apparent to the Respondent under the circumstances." *E.I. Du Pont*, 366 NLRB No. 178, slip op. at 4 (2018) (citing *Disneyland Park*, 350 NLRB at 1258, and *Shoppers Food Warehouse*, 315 NLRB at 259) (emphasis added). The dissent argues at length that the Union failed to demonstrate or expressly communicate to the Respondent the relevance of the information sought and, therefore, the Respondent did not violate the Act by its continued refusal to provide the information. However, as discussed above, we adopt the Section 8(a)(5) and (1) information request violation based on *Disneyland*'s second avenue, i.e., that "the relevance of the information should have been apparent to the Respondent under the circumstances," and find it unnecessary to pass on the first avenue. Under *Disneyland*, "the relevance of the information, or the basis for requesting it, need not be stated when relevance is 'apparent from the face of the request.'" *West Penn Power Co. v. NLRB*, 394 F.3d 233, 243 (4th Cir. 2005) (citation omitted). That is the case here. An employer has adequate notice of the reason for a request not just when the union states the reason expressly but also, as the judge found, "where the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out." *ADT Security Services*, 363 NLRB No. 36, slip op. at 2 (2015) (quoting *Brazos Electric Power Cooperative, Inc.*, 241 NLRB at 1018 (footnote omitted)). Our colleague appears to conflate these two avenues for determining relevance under *Disneyland*—and thereby misses the point of our finding—when he proclaims that "the Union did nothing to demonstrate the relevance of the nonbargaining unit information as required to trigger the Respondent's duty to furnish it", an assertion he repeats throughout his dissent. Moreover, we reject the dissent's further claims that we: (1) misapply and "dramatically expand" the circumstances under which the Board determines whether the relevance of the requested information should have been apparent; and (2) rely on inapposite case law in finding "apparent relevance" of the information sought.

As to his first argument, our dissenting colleague begins by claiming that our "analysis is based in large part on a fundamental misunderstanding of the record" and further criticizes as "baseless[]" and "speculat[ive]" both our findings that the Respondent may have been planning to have product processed at another of its facilities or subcontracted, and our finding that the Union's information request was a legitimate effort to verify its concerns about these possibilities. Far from being baseless or speculative, our findings are based on the undisputed record facts, as discussed above—including the timeline of events, the language of the Union's requests, and the Union's other inquiries during first contract bargaining—all of which support the Union's concern that unit work would be outsourced and support our "readily apparent relevance" conclusion. For example, the Union's May 6, 2020, and January 7, 2021 inquiries to the Respondent about whether it had other facilities in Pennsylvania and Ohio, and about the arrival of new machinery at its Brooklyn facility followed directly on the heels of the Respondent's repeated, rolling closure and layoff announcements, and were made before or between the two information requests. Additionally, on January 21, 2021, the Union asked the Respondent for any news about or changes in the Respondent's plan to close production and processing, and lay off a majority of unit employees. These inquiries again show the Union's continuing concern that the Respondent's closure and layoff plans could result in the moving of unit work to a nonunit workforce.

Finally, the Respondent's own back-and-forth over whether to provide the information to the Union belies the claim that the Respondent had no idea about the Union's outsourcing concern. As discussed earlier, the Respondent's attorney notified the Union about its renewed closure and layoff plans during the December 17 bargaining session which prompted the Union's initial inquiry about where the product would be produced and who would produce it. The Respondent's attorney equivocated by stating both that he would "find out" and that the Union was not entitled to the information. The Union repeated its request by letter dated January 14, 2021, and, at the January 21, 2021 bargaining session, the Respondent's attorney promised the Union a prompt written response to its request. Thus, what our colleague describes as "baseless[]" and "speculation" are record-based findings of the circumstances surrounding the Union's information requests, and, in turn, support the apparent relevance of the information sought.[19]

[19] Our colleague's assertion that the Union "never once voiced the rationale for the relevance developed by my colleagues" is not only beside the point in finding the relevance readily apparent, but it is also inaccurate. Indeed, the record shows that, in November 2020, the Union expressed to the Respondent its concern over the Respondent's moving work to a nonunion workforce. Moreover, we take administrative notice of pending court and Board actions demonstrating that: (1) an unfair labor practice charge is pending against the Respondent and Ohio Farms Packing Co., Ltd., an entity located in Ohio, alleging that the Respondent and Ohio Farms are alter egos and that the Respondent unlawfully transferred unit work to Ohio Farms' facility; and (2) the Respondent and Ohio Farms recently stipulated for purposes of a subpoena enforcement proceeding to being both a single employer (since at least October 18, 2019) and alter egos, and that Ohio Farms was established about December 24, 2007, by the Respondent as a continuation of its business preparing animal products for sale solely to customers of the Respondent. While these matters do not, of course, prove the Union's concerns, they serve to underscore their legitimacy, and bolster the conclusion that the relevance of the Union's information requests about outsourcing would have been apparent to the Respondent (which

Nor do we agree with the dissent's second argument that we rely on inapplicable case law to find that the relevance of the information should have been apparent. In this regard, the dissent challenges our reliance on "decisions in which *unions*, unlike here, affirmatively demonstrated the relevance of non-presumptively relevant information and thus obligated employers to furnish it on request." (emphasis added). As explained below, this challenge is misplaced.

We reiterate that, because we affirm the judge's findings and conclusion that the relevance of the information the Union requested should have been apparent to the Respondent, the Union was not *also* required to demonstrate relevance to the Respondent at the time of the requests. In citing the cases challenged by our colleague, we have not asserted that relevance was determined from the surrounding circumstances there. Rather, those cases are cited for generally accepted legal principles or as illustrations of how nonunit information may be relevant to a union's concerns regarding the preservation of bargaining unit work.

Further, in affirming the judge, we agree that she properly relied on cases involving subcontracting to support the general proposition that, where subcontracting or other business dealings affect the work of the bargaining unit employees, information regarding such arrangements is relevant to the union's performance of its collective bargaining duties. Here, the Union sought the information about the Respondent's other business dealings with entities that would be providing the Respondent with products for distribution -- which obviously would impact the work of not only the production and processing employees, but also of the distribution employees.[20]

Our colleague's reliance on *IGT d/b/a International Game Technology*, 366 NLRB No. 170 (2018), misses the mark. There, during first-contract bargaining, the employer stated its desire that the parties' contract mirror its contract with a different union in New York. The Board, reversing the judge, found that the union had not demonstrated the relevance of its request for the list of *all* of the respondent's locations, as the respondent had only raised its contract at its New York location. Our colleague argues that, "similar to the union's failure in *IGT* to request the specific contract that controlled the respondent's bargaining proposals, the Union here failed to request the specific information that [Union Negotiator] Sollicito testified was related to bargaining."[21] We disagree. As noted above, in *IGT*, the union requested information in response to the respondent's statement at bargaining that made a *specific* contract relevant, and the Board's decision suggests that it would have found a request for that specific contract appropriate. Here, the Union requested information in response to the Respondent's repeated claims that it would close its production operations, but would continue to distribute product provided by another entity or entities, which made the identity of these other entities relevant, and the Union *only* requested information specifically mentioned by the Respondent—the new source(s) of production and processing. Thus, contrary to the dissent, the Union's request for the names and locations of the entity or entities who would continue to supply the Respondent with product was not "attenuated" but directly flowed from the Respondent's repeated claims that it would close its production and processing operations, but maintain its distribution operations, which we find consistent with the Board's analysis in *IGT*.[22]

ORDER

The National Labor Relations Board orders that the Respondent, Atlantic Veal and Lamb, LLC, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Failing and refusing to bargain in good faith with United Food & Commercial Workers Union, Local 342, (the Union) by refusing to provide information requested by the Union on December 17, 2020 and January 14, 2021, which is necessary for the Union to perform its functions as exclusive collective-bargaining representative of the Respondent's employees in the following bargaining unit:

> All full-time and regular part-time processing and warehouse employees including wrappers, packers,

obviously knew of its own relationship to Ohio Farms). See *National Labor Relations Board v. Atlantic Veal & Lamb, LLC and Ohio Farms Packaging Co., Ltd.*, 23 Misc. 1130, 2023 WL 7166733 (E.D.N.Y Oct. 31, 2023); see Civil Docket for Case 1:23-mc-01130-BMC-VMS (Eastern District of New York) (Brooklyn), Docket Entry #39 (8/10/2023) Exhibit A (Stipulation) to Letter Submitting Stipulation and Withdrawing Certain Paragraphs of Subpoenas.

[20] There is no contention that the Respondent would have been obligated to engage in decisional bargaining over the Respondent 's closure of its processing operations.

[21] While our colleague argues that the "lack of any apparent relevance is perhaps most clearly demonstrated by the testimony of Union representative Sollicito," Sollicito's testimony appears to support at least one of the reasons mentioned by the judge—to verify the Respondent's claims—and his testimony does not otherwise contradict the judge's other grounds for finding the apparent relevance of the information sought.

[22] Additionally, our colleague finds the circumstances here different from those in cases where the Board found that the relevance should have been apparent. For example, he points to *McLaren Macomb*, 369 NLRB No. 73 (2020), and argues that, here, unlike in *McLaren Macomb*, there is no allegation that the Respondent planned to transfer bargaining-unit work, only that it was contemplating shutting down its production operations. This argument fails. While there was no allegation of the transfer of bargaining unit work, the Respondent told the Union it would be ending a large portion of bargaining unit work and laying off unit employees. Just as the union in *McLaren Macomb* sought to protect unit work being transferred, and the reasons for this were obvious from the surrounding circumstances, so too was the Union 's attempt here to protect unit work from being eroded, and possibly replaced by a third party or by the Respondent at another location.

meat cutters, sanitation mechanics, maintenance, freezer, shipping, and receiving employees employed by the Employer, excluding all clerical employees, managers, agency employees, sales employees, professional employees, quality control employees, guards and supervisors as defined by the National Labor Relations Act.

b. Unilaterally laying off bargaining unit employees without first bargaining to an overall impasse.

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

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

a. Provide the Union with the information requested at the December 17, 2020 negotiating session and in Louis Sollicito's January 14, 2021 letter regarding the identity and location of the entities from which the Respondent would obtain its product to be distributed from its Brooklyn, New York facility, in the event that the production and processing operation at that location is closed.

b. Before laying off bargaining-unit employees, or before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective bargaining representative of employees in the bargaining unit described above.

c. Rescind the layoffs of unit employees that were unilaterally implemented on January 29, 2021.

d. Within 14 days from the date of this Order, offer Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

e. Make Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of their unlawful layoffs, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

f. Compensate Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

g. Within 21 days of the date the amount of backpay is fixed either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 29 a copy of corresponding W-2 forms for Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias reflecting their backpay award.

h. Within 14 days of the date of this Order, remove from its files any reference to the unlawful layoffs of Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias, and within 3 days thereafter, notify the employees that this has been done and that the unlawful layoffs will not be used against them in any way.

i. Post at its Brooklyn, New York facility copies of the attached notice marked 'Appendix'[23] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 29, 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. 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 December 17, 2020.

j. Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. February 22, 2024

[23] 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 the 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."

Lauren McFerran, Chairman

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER KAPLAN, dissenting in part.

I agree with my colleagues that the Respondent violated Section 8(a)(5) and (1) by unilaterally laying off employees.[1] Contrary to my colleagues, however, I would dismiss the allegation that the Respondent unlawfully failed and refused to provide the names and locations of companies who would "perform the production" currently performed by unit employees in the event the Respondent closed its meat-production operations, as the Respondent thought would be necessary during the COVID-19 pandemic.[2] The Union did nothing to demonstrate the relevance of the nonbargaining unit information as required to trigger the Respondent's duty to furnish it, nor is there a basis for my colleagues' conclusion that its relevance "should have been apparent" to the Respondent without any explanation from the Union.

As I explain below, my colleagues' analysis is based in large part on a fundamental misunderstanding of the record. The Respondent had informed the Union that it would have to shut down its processing business due to the effects of the pandemic on the restaurant industry and would continue only as a distributor. My colleagues, however, baselessly suggest that the Respondent might have been planning to retain its product and either have it processed at a hypothesized, unknown facility or subcontract it out. They further claim that the Respondent should have known that the Union harbored such suspicions (although the Union never told the Respondent this) and sought to verify them through the third-party information that it had requested—despite the lack of evidence that the Respondent surreptitiously operated or planned to open another processing facility or contemplated subcontracting.

In finding, under these circumstances, that the relevance, if any, of the requested information about third parties "should have been apparent" to the Respondent, my colleagues dramatically expand the circumstances under which the "apparent relevance" requirement of nonpresumptively relevant information will be found to be met, essentially stretching that phrase beyond the interpretation set forth in any previous Board decision, not to mention any reasonable interpretation of those words.[3]

For the reasons stated below, I respectfully dissent, in part, from today's decision.

Background

The Respondent operates a meat-processing, packaging, and distribution business at its location in Brooklyn. On December 17, 2019, a unit of all warehouse employees voted to be represented by the Union.[4] These included the processing, production, and distribution employees. In March 2020,[5] prior to certification and the start of first-contract bargaining, the Respondent laid off several employees,[6] and on March 27, the Respondent informed the Union that "the sudden collapse of the restaurant industry" in the New York City area due to the COVID-19 pandemic had "destroyed the Company's customer base" and that the Company expected to permanently close its processing and production operations on April 30 and lay off 35 additional employees. The Respondent said it would continue distribution operations from its facility but provided no more detail. It subsequently told the Union that it was postponing the partial closure to May 30 and shortly thereafter pushed the closure to June 30.[7] Then, at a negotiation session on May 27, the Respondent informed the Union that its plans had changed and that it no longer planned to shut down its processing and production operations.

However, about 6 months later, at a December 17 negotiation session, the Respondent once again told the Union that it intended to move ahead with the partial closure sometime during the first quarter of 2021. Be-

[1] Unlike my colleagues, I would require the Respondent to compensate the affected employees for their other pecuniary harms only insofar as the losses were directly caused by the unlawful layoffs, or indirectly caused by the unlawful layoffs where the causal link between the loss and the unfair labor practice is sufficiently clear, consistent with my partial dissent in *Thryv, Inc*., 372 NLRB No. 22 (2022).

[2] I agree with my colleagues, however, that the complaint allegation was not time barred.

[3] As I indicated in *McLaren Macomb*, 369 NLRB No. 73 at slip op. at 1 fn. 1 (2020), I would be open to reconsidering whether a later determination by the Board that the relevance of requested, nonunit information "should have been apparent" to an employer can be sufficient to give rise to an employer's obligation to provide the information. This case aptly illustrates how the principle can be misused to substitute for a union's failure to demonstrate the relevance of requested, nonunit information.

[4] The unit was certified on April 15, 2020.

[5] Dates hereafter are in 2020 unless otherwise noted.

[6] These layoffs are not alleged to be unlawful.

[7] As discussed below, on April 28, the Union requested financial records supporting the Respondent's claim about pandemic-related losses and the resulting need for layoffs. By letter dated May 5, the Respondent said the information was "confidential and proprietary" but offered to bargain for an "accommodation of the parties' respective interests." There is no record evidence that the Union ever followed up. The Union also requested information about any other locations of the Respondent. The Respondent informed the Union that the Brooklyn facility was its only processing facility and that it had no employees at other locations. On May 8, the Union requested information about companies that would provide processed meat to the Respondent in the event of a shutdown, but—as with the later request now before us—it did not explain the relevance of that information, and the request became moot when the Respondent scuttled its shutdown plan. There are no allegations that the Respondent acted unlawfully with respect to these requests.

cause the Respondent planned to continue the distribution part of its business, the Union asked the Respondent where the product would be produced and who would be producing it. The Respondent's attorney responded that he did not know and would find out, but he also stated that the Union was not entitled to that information. The Union's attorney disagreed, stating that he believed that the Union was entitled to it, but said nothing to suggest why he thought the names and locations of other companies were relevant. By letter dated January 14, 2021, Louis Sollicito, the Union's lead negotiator, requested that the Respondent provide "details as to what company or companies will be performing the production that is currently taking place on premise[s] once the shutdown is complete as well as where those companies are located." The Union said nothing about why it thought this information was relevant or necessary to its duties. As of the date of the hearing, the Respondent had not shut down its processing and production operations.[8]

Discussion

An employer has the statutory obligation to provide, on request, relevant information that the union needs for the proper performance of its duties as collective-bargaining representative. *Disneyland Park,* 350 NLRB 1256, 1257 (2007). Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant, and the Respondent must provide it. Id. Information not directly related to represented employees' terms and conditions of employment, on the other hand, is not presumptively relevant, and a union bears the burden of establishing relevance. Id. "To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the [r]espondent under the circumstances. Absent such a showing, the employer is not obligated to provide the requested information." Id. at 1258 (citations omitted). Although information requests are subject to a broad, "discovery-type" standard, the Board has emphasized that, in cases involving nonpresumptively relevant information, "[t]he 'showing . . . *must be more than a mere concoction of some general theory which explains how the information would be useful*. . . .' Otherwise, the [requesting party] would have 'unlimited access to any and all data which the [other party] had.'" *Hotel & Restaurant Employees Local 226 (Caesars Palace)*, 281 NLRB 284, 288 (1986) (emphasis added) (quoting *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 868 (9th Cir. 1977)).

It is undisputed that the requested information does not pertain to the bargaining unit and, therefore, is not presumptively relevant. It is also undisputed that the Union did not say anything to the Respondent to explain why the requested information was relevant to its duties as the bargaining representative of the unit employees, which the Union's representative admitted at the hearing. Notwithstanding that, my colleagues find that the requested information about the "identity and location of the entities from which Atlantic Veal would obtain its product after closing the production and processing operation" was relevant to the Union's duties as collective-bargaining representative and that the relevance of the information "should have been apparent" to the Respondent.[9]

My colleagues rely on various possible reasons for finding that the requested information could have been relevant—none of which the Union had communicated to the Respondent—and conclude that these reasons should have been readily apparent to the Respondent.[10] They find, in the most general of terms, that the information about other companies would have been relevant to assess claims made by the Respondent, to enable the Union to formulate bargaining proposals, and to preserve bargaining-unit work. They do not, however, specifically explain how the names and locations of outside companies that would provide products to the Respondent for distribution or that, conceivably, would take over the shuttered operation in the event the Respondent closed its processing operation would have any specific bearing on these reasons. Having failed to establish clear relevance, they certainly do not provide any basis for finding that the relevance of the information about other companies should have been apparent to the Respondent.

In finding to the contrary, my colleagues rely on wholly inapposite decisions in which unions, unlike here, affirmatively demonstrated the relevance of nonpresumptively relevant information and thus obligated employers to furnish it on request.[11] But that is not the issue here,

[8] For that matter, there is no evidence that the Respondent had ever fully developed a plan to shut down its operations or that it had even contacted other companies, let alone decided "what company or companies will be performing the production" at the premises "once the shutdown is complete."

[9] The reference to "its product" is one of several statements by my colleagues that imply that the Respondent would not be shutting down its processing operations but would instead subcontract or transfer unit work to another location not in the record or suggested by the evidence. After the shutdown, of course, the Respondent would not have "its product" but would instead be a distributor for clients or a possible successor. No objective evidence supports my colleagues' repeated implications to the contrary.

[10] My colleagues correctly find that the information was not presumptively relevant.

[11] See *Wyman Gordon Pennsylvania, LLC,* 368 NLRB No. 150, slip op. 6–8 (2019) (union's written requests specifying that it needed information to verify the respondent's claim that the union's wage proposal would compel the respondent to raise its prices demonstrated relevance of the respondent's prices, revenue and labor costs, but *not for its request for the identity and prices of the respondent's competitors*); *Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services*, 367 NLRB No. 103, slip op. at 2–5 (2019) (finding union explained need for requested financial information to assess respondent's bargaining-table claims of inability to pay higher wages), enfd. 957

which is how the relevance of requested nonunit information about other companies "should have been *apparent*" to the Respondent despite a lack of explanation by the Union. As I explain below, no cases in which the Board has found that the relevance of nonunit information should have been apparent to an employer without any explanation from the requesting union support my colleagues' conclusion. Moreover, the fact that my colleagues need to speculate as to various possible generalized reasons as to why the information could have been relevant--reasons not proffered by the Union, by the way--rather than provide any specific analysis as to why the particular information sought about other companies was relevant is telling. This type of general speculation was specifically rejected by *Hotel & Restaurant Employees Local 226 (Caesars Palace)*, as discussed above, and demonstrates why the General Counsel failed to meet her burden under *Disneyland Park* to show that the Union established the relevance of the requested information or that the relevance of the information should have been apparent to the Respondent under the circumstances.[12]

But the lack of any apparent relevance is perhaps most clearly demonstrated by the testimony of union representative Sollicito, whom the Respondent called as its only witness at the hearing. During cross examination and over the Respondent's objections, counsel for the General Counsel asked Sollicito leading questions including whether he believed that his January 14, 2021 request for information about the entities who would supply the product after the closure was "relevant to bargaining over [expected] layoffs." After being prompted, he answered that he did, because, with the information, "we could understand if there really was a need for the Employer to do these layoffs," and could ensure that, "unbeknownst to us," the Respondent had not opened another facility within the past 8 months since the last time the Union had requested—*and the Respondent had provided*—that information. He did not explain, either to the Respondent at the time of the request or at the hearing, how the names and locations of *other companies* were relevant to the Respondent's need to lay off employees in the midst of the pandemic. And as noted above, on April 28, the Union requested financial records supporting the Respondent's claim about pandemic-related losses and the need for layoffs as well as information about any other locations of the Respondent. At that time, the Respondent offered to bargain for an accommodation for the financial information, and it informed the Union that the Brooklyn facility was its only processing facility and that it had no employees at other locations. In light of this prior specific request, any finding that the names and locations of possible suppliers or buyers were relevant to understanding the need for layoffs is nonsensical, especially where the Respondent had offered to discuss an accommodation regarding the requested financial information. That financial information is the information that would have permitted the Union to assess the need for layoffs; the names and locations of other meat-processing companies, on the other

F.3d 1006 (9th Cir. 2020); *Caldwell Mfg. Co.*, 346 NLRB 1159–1160, 1162–1164 (2006) (union specifically tied oral and written requests for financial information to respondent's bargaining-table claims that its financial constraints and competitive weakness required pay freeze); *Leland Stanford Junior University,* 262 NLRB 136, 152 (1982), enfd. 715 F.2d 473 (9th Cir. 1983) (although the information request did not state the union 's intended use for the nonunit information, the union 's explanation of relevance at the hearing was found under extant law to be an adequate demonstration of relevance).

My colleagues also state that the judge properly relied on subcontracting cases—also inapposite—in which unions sought information about subcontractors performing bargaining-unit work. This is not a subcontracting case, and no record evidence suggests that the Respondent planned to subcontract production work. Further, unlike here, *in each of these cited cases* the unions satisfactorily explained the relevance of the requested information. For that reason, respondents in the cited cases had a duty to furnish the information. See *Earthgrains Co.*, 349 NLRB 389, 392–395 (2007); enfd. in relevant part 514 F.3d 422 (5th Cir. 2008); *Allison Corp.*, 330 NLRB 1363, 1366–1368 (2000); *Somerville Mills*, 308 NLRB 425, 441–442 (1992), enfd. 19 F.3d 1433 (6th Cir. 1994); *Island Creek Coal Co.*, 292 NLRB 480, 489–492 (1989). And in *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844 (2001), cited by my colleagues, the merits argument was not before the Board.

In contending such cases are relevant, my colleagues erroneously claim that "where subcontracting or other business dealings affect the work of the bargaining unit employees, information regarding such arrangements is relevant to the union 's performance of its collective bargaining duties." However, *Disneyland Park*, on which they rely, contradicts that sweeping claim. The Board there found that the union did not establish relevance when it told the respondent that it had observed an increase in subcontracting of unit work while departing unit employees had not been replaced, and contended that the respondent was "reducing its workforce and subcontracting additional work" in possible breach of the contract. Id. at 1258. Because these explanations did not suggest a contract breach, the Board found that they failed to establish the relevance of requested information about subcontracting, let alone establish that relevance should have been apparent to the respondent. Id. My colleagues' erroneous claims about case law in an effort to make this case look like a subcontracting case (which could implicate bargaining subjects) rather than a partial closure (which does not) obfuscate the relevant legal discussion here.

[12] My colleagues contend that, in discussing what the Union failed to explain to the Respondent, I am conflating the two separate avenues set forth in *Disneyland Park* by which the General Counsel can establish that the Union met its burden to establish relevance. I disagree. The fundamental burden under *Disneyland Park* is that the union must establish relevance. The exception is for cases where it is "readily apparent" from the surrounding circumstances that the information sought is relevant; in other words, it is so obviously relevant that it would not make sense to require the union to explain to a respondent why it is relevant. Here, the information request on its face does not establish relevance, and my colleagues do not find that the Union established relevance. So, the fact that the Union itself never once voiced the rationale for relevance developed today by my colleagues suggests that the Union itself may not have clearly understood why the *identity* of the third-party companies themselves was relevant. In such a situation, it is quite the leap to find that the relevance of the *identity* of any third-party companies should have been readily apparent to the Respondent.

hand, would not be relevant to that analysis. Had the Union followed up on the Respondent's offer, it might have obtained what Sollicito said he actually needed.

Furthermore, Sollicito's testimony that the Union sought the names and locations of other companies to check on whether the *Respondent* had opened any new facilities since its April 28 request also makes little sense. The Union did not even ask whether the Respondent had other facilities in the requests that are now before us. Accordingly, if Sollicito's testimony reveals anything, it is that the names and locations of possible companies were merely tangential, at best, to the information the Union was actually seeking.[13]

In finding that the relevance of the requested information "should have been apparent" to the Respondent, my colleagues do not confront the specific reasons Sollicito gave for requesting it. Compounding this error, they fail to point out any relevant precedent that would support a finding that the relevance of information about other companies should have been apparent to the Respondent. The few cases in which the Board has excused a union from demonstrating the relevance of requested nonunit information because relevance was obvious or "should have been apparent" do not support finding apparent relevance here.

For example, in *McLaren Macomb*, 369 NLRB No. 73 (2020), the Board adopted the judge's finding that the relevance of requested information about unit work, both before and after the respondent transferred it out of the unit, should have been apparent to the respondent because, as the respondent knew, it was the subject of a pending arbitration, and the judge found that the respondent *did in fact know why the union sought the information*. Id. slip op. at 6–7. In this case, of course, there is no allegation that the Respondent planned to transfer bargaining-unit work to another location—only that it was losing its customer base and anticipated shutting down its production operations.[14] In *Beverly Enterprises*, 310 NLRB 222 (1993), enfd. in part on other grounds sub nom. *Torrington Employees Assn. v. NLRB*, 17 F.3d 580 (2d Cir. 1994), the union requested information during contract bargaining about the wages of contracted, nonunit pool nurses who were performing bargaining-unit work. The Board found that, based on the context of the parties' negotiations, the respondent would have known that the wages of contract employees were relevant to the union's wage proposals and its desire to persuade the respondent to reduce its reliance on contract nurses to perform unit work. *Beverly Enterprises*, 310 NLRB at 227. And in *Brazos Electric Power Cooperative Inc.,* 241 NLRB 1016, 1018–1019 (1979), enfd. in relevant part 615 F.2d 1100 (5th Cir. 1980), the respondent unlawfully failed to provide requested information to the union about recent wage increases for nonunit employees, which the union had requested in preparation for contract bargaining. Because the respondent's known practice was to maintain wage parity between unit and nonunit employees, and the respondent had raised nonunit employee wages, it was "on notice" that the information was relevant for bargaining. *Brazos Electric Power*, 241 NLRB at 1019. Unlike in *Beverly Enterprises* and *Brazos Electric Power*, there is no direct correlation between a term and condition being negotiated and the corresponding term and condition enjoyed by employees outside the unit. Here, the names and locations of other companies that might send *their products* to the Respondent for distribution has no connection to a specific term and condition of the unit employees' employment.

In contrast, in *IGT d/b/a International Game Technology*, 366 NLRB No. 170 (2018), the Board reversed the judge's conclusion that the relevance of a requested list of all of the respondent's locations should have been apparent to the respondent. There, the respondent stated during first-contract bargaining that it wanted the con-

[13] Contrary to my colleagues' suggestion, the Respondent's stipulation in a separate case that it operates its animal farm(s) in Ohio as an "alter ego" has no bearing on the Union's request for information regarding who would *process* meat if the Respondent closed its processing operation.

[14] In attempting to compare *McLaren Macomb* to the instant case, my colleagues state that the Union here, like the one in *McLaren Macomb*, sought to protect unit work. That has no bearing on whether the information requested was relevant to this goal, nor whether any such relevance would have been apparent to the Respondent. Moreover, the information request in *McLaren Macomb* was pursuant to a mandatory grievance proceeding, and the judge there found that the respondent knew why the union needed the requested information. In contrast, the shutdown as contemplated here would not have been a mandatory bargaining subject, and my colleagues do not say how the *identities* of other companies would have been relevant to the Union 's representational duties or its desire to preserve unit work

[15.] In attempting to compare this case to *IGT*, my colleagues only state that the *IGT* Board would have found a violation had the facts been different. I see no need to address that baseless speculation. They also contend that the Union here requested information "in response to the Respondent's repeated claims that it would close its production operations, but would continue to distribute product provided by another entity or entities, which made the identity of these other entities relevant . . . ." It did not. As in *IGT*, the Union did not request specific information tailored to its representational duties.

Further, unlike my colleagues' hypothetical discussion of *IGT*, the identities of companies as requested here do not implicate mandatory subjects of bargaining. My colleagues' claim that the Respondent "made" the identities of other companies "relevant" is an inaccurate statement of law. The decision to shut down is not a mandatory bargaining subject, nor is the choice of post-shutdown clients or business partners, and my colleagues provide no credible explanation as to how the identities of hypothetical companies who themselves have no relationship to the terms and conditions of unit employees' employment would be relevant to the Union 's bargaining approach or representative duties. The Respondent also did nothing to connect the identities of other companies to mandatory subjects of bargaining or otherwise show that the relevance of these companies should have been apparent. As I have noted, the Union's prior information request, which the Respondent has offered to discuss with the Union, would potentially shed light on the Respondent's need for a shutdown—which may be what the Union actually sought. But it was the Union here, not the Respondent, who failed to renew discussions about that request.

tract to mirror a contract it had in New York with a different union. Although the union did not demonstrate the relevance of the list of all of the Respondent's locations, the judge found that the relevance should have been apparent based on the respondent's statements about the New York contract. A unanimous Board reversed, explaining that, by telling the union that it wanted the contract to mirror the contract in New York, the respondent gave no indication that *all* of its other locations had any bearing on its contract proposals. Id., slip op. at 2.[15]

Applying the above precedent here, there is no reasonable basis for concluding that the relevance of the requested information "should have been apparent" to the Respondent. The identity of hypothetical entities who, presumably, would have been future clients for the surviving distribution operation or potential successors to the meat processing operation would not clearly relate to the union's bargaining or representation duties. The Union here certainly did not need to know the particular identities and locations of other companies in the way that the union in *Brazos Electric Power*, for instance, needed to know the wages of nonunit employees, which the respondent there had expressly tied to the wages of employees in the unit. Rather, similar to the union's failure in *IGT* to request the specific contract that controlled the respondent's bargaining proposals, the Union here failed to request the specific information that Sollicito testified was necessary for bargaining. Like in *IGT*, any connection between the information the Union sought here and its reasons for seeking it was too attenuated and indirect to seriously contend that its relevance "should have been apparent" to the Respondent, if indeed it was relevant at all.[16] Accordingly, the Respondent would have no reason to guess that the names and locations of other companies were relevant to whether its pandemic-related financial outlook justified the partial closure and resulting layoffs. Nor would it have reason to think that the information about other companies was relevant to the Union's desire to know whether it had secretly opened up new meat-processing facilities during the height of the pandemic. In fact, the Union's information request specifically acknowledges the Respondent's anticipated closure of production operations and conditions the information request on that closure. In light of that, it would not have been apparent that the Union was questioning the Respondent's intentions and that it sought the names of other meat-production companies to verify the Respondent's plans. It would also not have been apparent that the Union merely sought to verify the Respondent's plans in light of the Union's failure to follow up on the Respondent's prior offer to discuss requested financial information.

[16] There is no need for me to pass on whether the Union *could have* carried its minimal burden of demonstrating relevance. Based on Sollicito's testimony, I am doubtful. But what matters here is that it did not.

Rather than review cases that are specifically on point, however, my colleagues largely rely on *Disneyland*'s highly generalized statement that the General Counsel can meet her burden of proof by demonstrating that the relevance of the information should have been apparent to the Respondent. A principle that was not relied on in *Disneyland*, nor discussed or analyzed to reveal how apparent relevance is actually applied. It is telling that the majority has cited no on-point precedent to support its conclusion here, aside from efforts to compare and distinguish this case from *McLaren Macomb* and *IGT*. The majority has also not shown that this case is any different from other cases in which unions sought nonunit information and were required to explain their need for the information before employers had a duty to respond.

Moreover, my colleagues do not specifically address how the particular identities of companies (presumably possible future clients or successors) would aid the Union in bargaining or prevent the loss of unit work.[17] Rather, as noted above, their focus is on the Union's desire—never suggested to the Respondent—to verify whether the Respondent planned to shut down or whether it was surreptitiously planning some other arrangement such as to subcontract or transfer work to another wholly hypothetical location. In several places in their decision my colleagues imply that the Respondent had such intentions.[18] But because the Union never expressed such

[17] For example, the majority's vague reference to the Union's ability to "adjust its bargaining approach" has no apparent connection to the identities of third parties. And neither my colleagues nor the judge nor the Union explain how the Union would "adjust" unspecified contract proposals with the Respondent once it knew the identities of companies (if any) who did not employ unit workers and with whom it had no bargaining relationship. My colleagues recognize that the Respondent was not obligated to engage in decisional bargaining over its anticipated shutdown under *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), and nor was it obligated to engage in effects bargaining (however, the Respondent immediately offered to bargain over the effects of its shutdown at the time it first notified the Union that the pandemic would force a partial closure). As it is not clear to the judge, the Union, or my colleagues how the identities of third parties relate to mandatory bargaining subjects, it would certainly not have been "apparent" to the Respondent.

[18] For example, my colleagues state, "[i]f the Respondent had identified where its product would be produced, of course, then its claims in bargaining [ ] would have been more credible." Of course, the reference to "its product" misleadingly suggests that the Respondent would still own the processed meat it would distribute, as it would if were to subcontract rather than—as it said--shut down operations and continue only as a distributor. Similarly, the majority claims that "[k]nowing the identity and location of the entities that would be performing" the work formerly performed by the unit employees "would allow the Union to, for example, bargain over the transfer of the impacted unit employees to a new location." It would not. My colleagues' innuendo suggests that the Respondent was surreptitiously planning to transfer processing operations to another (apparently nonexistent) location rather than close it altogether (in the midst of the pandemic, no less!). No objective evidence or allegation supports that suggestion, and mere suspicion, as this is, does not trigger an obligation to furnish requested, nonunit information. *General Aire Systems, Inc.,* 371 NLRB No. 120, slip op. at 7 (2022) (finding union must express more than mere suspicion that

suspicions to the Respondent, and in fact made clear in its information request that it took the anticipated shutdown plan at face value, there is no basis for finding that the Respondent should have known that the Union was actually seeking to verify whether the Respondent intended to shut down. In any event, the information request was for the identity and locations of *other companies*. It was not a request for clarification about whether the Respondent meant to partially shut down. That, of course, could have been clarified had the Union simply followed up with the Respondent on its prior request for financial information.

In sum, because the Union never demonstrated the relevance of the nonunit information it requested, nor was the information apparently relevant, the Respondent was under no obligation to furnish it and the allegation must be dismissed. By excusing the Union from demonstrating the relevance of the requested information because its relevance "should have been apparent," my colleagues gut the bedrock requirement that a union must demonstrate relevance to trigger a Respondent's duty to produce requested nonunit information. If relevance should have been apparent here, where the requested information had only a roundabout and attenuated connection to the Union's need for it, then there are few circumstances in which the relevance of nonunit information would not be deemed "apparent." By improperly expanding the clear standard set forth in *Disneyland Park*, a clear standard that has guided unions and employers for decades, my colleagues fail to balance the interests of unions and employers—not to mention the potential privacy concerns of third parties–when a union seeks information that does not directly pertain to a bargaining unit. I therefore respectfully dissent from my colleagues' finding that the Respondent unlawfully failed to furnish the requested information.

Dated, Washington, D.C. February 22, 2024

Marvin E. Kaplan, Member

NATIONAL LABOR RELATIONS BOARD

requested, nonunit information would be relevant to its representational duties before an employer is obligated to respond). Similarly, my colleagues place significant weight on hearsay testimony about unidentified machinery that allegedly resembled production equipment. At one bargaining session, the Union asked about the unidentified equipment, and the Respondent answered its question. The Union never asked about that equipment again, nor did the General Counsel allege that the Respondent violated the Act by failing to adequately respond to that question. I disagree with my colleagues that the fact that the parties had one exchange regarding unidentified equipment should have made it apparent to the Respondent that the Union 's request for the identity and location of "what company or companies will be performing the production that is currently taking place on premise[s] once the shutdown is complete" sought relevant information.

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 in good faith with United Food & Commercial Workers Union, Local 342 (the Union), by failing and refusing to provide it with information necessary for the Union to perform its duties as the exclusive collective bargaining representative of our employees in the following bargaining unit:

> All full-time and regular part-time processing and warehouse employees including wrappers, packers, meat cutters, sanitation, mechanics, maintenance, freezer, shipping, and receiving employees employed by the Employer, excluding all clerical employees, managers, agency employees, sales employees, professional employees, quality control employees, guards and supervisors as defined by the National Labor Relations Act.

WE WILL NOT unilaterally lay you off without first bargaining to overall impasse.

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 provide the Union with the information requested at the December 17, 2020 negotiating session and in Louis Sollicito's January 14, 2021 letter regarding the identity and location of the entities from which the Respondent would obtain its product to be distributed from its Brooklyn, New York facility, in the event that the production and processing operation at that location is closed.

WE WILL before laying off bargaining unit employees, or before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit described above.

WE WILL rescind the layoffs of unit employees that were unilaterally implemented on January 29, 2021.

WE WILL within 14 days from the date of the Board's order, offer Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias whole for any loss of earnings and other benefits resulting from their unlawful layoffs, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful layoffs, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 29 a copy of corresponding W-2 forms for Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias reflecting their backpay awards.

WE WILL within 14 days of the date of the Board's order, remove from our files any reference to the unlawful layoffs of Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias, and WE WILL within 3 days thereafter notify them in writing that this has been done and that the unlawful layoffs will not be used against them in any way.

ATLANTIC VEAL AND LAMB, LLC

The Board's decision can be found at www.nlrb.gov/case/29-CA-272677 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.

Matthew A. Jackson, Esq., for the General Counsel.
Martin L. Milner, Esq., for the Charging Party.
Bryan T. Carmody, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

LAUREN ESPOSITO, Administrative Law Judge**.** Based upon a charge filed on February 11, 2021, by United Food & Commercial Workers Union, Local 342 (Local 342 or the Union), on July 20, 2021, the Regional Director, Region 29, issued an Amended Complaint and Notice of Hearing against Atlantic Veal and Lamb, LLC (Atlantic Veal or Respondent). The Complaint alleges that Atlantic Veal violated Sections 8(a)(1) and (5) of the Act by failing to provide the Union with requested information necessary for and relevant to the Union's performance of its duties as exclusive collective-bargaining representative. The complaint further alleges that Atlantic Veal violated Sections 8(a)(1) and (5) by laying off bargaining unit employees on about February 1, 2021, without providing the Union with notice and the opportunity to bargain. Atlantic Veal filed an answer on July 31, 2021, denying the Complaint's material allegations.

This case was tried before me by videoconference on September 9 and 10, 2021.[1] On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel (General Counsel) and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Atlantic Veal, a corporation with a principal office located at 275 Morgan Avenue, Brooklyn, New York, has been at all relevant times engaged in the processing and packaging of meat products. Atlantic Veal admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Atlantic Veal also admits, and I find, that Local 342 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

Atlantic Veal operates a meat processing facility at its 275 Morgan Avenue location in Brooklyn, cutting down lamb and veal and preparing portions of meat, which it then packages for distribution. Tr. 42–43. After the portions of meat are boxed and wrapped, the product is moved to the distribution component of the facility, where it is labeled, placed on pallets and crates, and loaded onto trucks for delivery. Tr. 43.

After a representation election conducted on December 17, 2019, on April 15, 2020, the Regional Director, Region 29, certified Local 342 as the exclusive collective bargaining representative of the employees in the following bargaining unit:

> Including: All full-time and regular part-time processing and warehouse employees including wrappers, packers, meat cutters, sanitation, mechanics, maintenance, freezer, shipping, and receiving employees employed by the Employer.

[1] The complaint was amended on the record to seek as a remedy that a representative of Atlantic Veal read the National Labor Relations Board Notice to Employees in English and Spanish to Respondent's employees during work time and in the presence of a Board agent, or in the alternative to have a Board agent read the Notice to Employees during work time in the presence of Atlantic Veal's supervisors. GC Ex. 1(l); Tr. 23–27.

> Excluding: All clerical employees, managers, agency employees, sales employees, professional employees, quality control employees, guards and supervisors as defined by the National Labor Relations Act.

Jt. Ex. 1, ¶ 1; Complaint ¶ 4. Atlantic Veal admits and I find that the above employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The majority of the employees work in the production component of Atlantic Veal's operation, as opposed to distribution. Tr. 44.

Two representatives of Charging Party Local 342—Ricardo Chavez and Dennis Henry – were called as witnesses by General Counsel. Chavez has been Assistant to the President of Local 342 since 2015, and works primarily on collective bargaining. Tr. 38. Henry has been a Local 342 organizer for 7 years. Tr. 103. Henry organizes new members, assists with bargaining, and processes grievances on behalf of the Union. Tr. 103–104. Louis Sollicito is a lead bargainer for the Union, negotiating both initial and successor collective bargaining agreements, and reports directly to Local 342 President Deana Abondolo. Tr. 140–141. Atlantic Veal called Sollicito to testify on its behalf pursuant to Federal Rule of Evidence 611(c).

B. Initial Bargaining and Layoffs in Spring 2020

As discussed above, the Union was certified as exclusive collective bargaining representative on April 15, 2020.[2] In March 2020, prior to the certification, Atlantic Veal laid off at least 38 employees. Tr. 39–40; R.S. Ex. 1. On March 27, 2020, Phillip Peerless of Atlantic Veal sent a letter to the Union, entitled "Notice of Plant Closure," stating that, "effective April 30, 2020," Respondent would "close the processing and production operations" at the 275 Morgan Avenue plant, because "the sudden collapse of the restaurant industry" in the New York City area had "destroyed the Company's customer base." R.S. Ex. 1. Peerless stated that as of March 27, 2020, 38 employees had been or would be laid off, and that an additional 35 employees would be laid off on April 30, 2020. R.S. Ex. 1. The letter to the Union included a list of employees affected by the layoffs, together with their job titles, as well as copies of letters being sent to each individual affected employee. R.S. Ex. 1. Subsequently, on April 6, 2020, Respondent's attorney Bryan T. Carmody sent a letter to Local 342 Secretary-Treasurer Lisa O'Leary, stating that Respondent recognized the Union as the bargaining unit employees' exclusive collective bargaining representative. R.S. Ex. 2. Respondent also offered to begin negotiations "immediately" for a collective bargaining agreement, and regarding "the effects of the recent layoffs of represented employees and the future, expected layoff of other represented employees." R.S. Ex. 2.

The first negotiating session between the parties took place on April 27, 2020. Sollicito was the lead negotiator for the Union, and Carmody was the principal spokesperson for Atlantic Veal.[3] Tr. 141–142. During this session, Carmody stated that the closure of the processing and production operation remained scheduled for April 30, 2020. Tr. 187. The Union proposed that layoffs be conducted in seniority order, that the laid off employees receive 1 week of severance pay for each year of employment, and that Respondent continue health insurance for the laid off employees for 3 months. Tr. 187–188, 191–192. Sollicito testified that Carmody stated that he would discuss these issues with Atlantic Veal's management and respond at the next session. Tr. 190–191.

On April 28, 2020, Sollicito sent a letter to Carmody stating that the Union was prepared to begin negotiating for a collective bargaining agreement, and to negotiate "the effects of the lay off." R.S. Ex. 4. In his letter, Sollicito requested that Respondent provide information in connection with the negotiations. With respect to the impending layoff in particular, Sollicito requested that Atlantic Veal provide the following information:

> 1. Does the employer still intend [to] cease its operations at the Brooklyn Location 275 Morgan Ave. Brooklyn, NY 11211 on April 30, 2020?
>
> 2. Does the employer still intend to cease its operation permanently at the above location?

R.S. Ex. 4. Sollicito also requested "A list of all business locations where the client processes food including addresses other than Morgan Ave Brooklyn location," and asked that Atlantic Veal "Advise if the employer is conducti[ng] layoffs in any of their other locations." R.S. Ex. 4. Sollicito requested financial documentation establishing the decline in business which necessitated the upcoming layoffs. R.S. Ex. 4. Finally, Sollicito requested information regarding the identities, work performed, and benefits available to the bargaining unit employees. R.S. Ex. 4. Sollicito testified that the Union did not demand bargaining regarding the decision to lay off employees effective April 30, 2020, because the Union was unsure, as evinced by the first question in his letter, as to whether those layoffs would actually take place. Tr. 189–191.

Atlantic Veal did not in fact lay off any production and processing employees on April 30, 2020. Tr. 220–221. Respondent did not lay off any bargaining unit employees after March 30, 2020 until the January 29, 2021 layoffs which are the subject of the complaint's allegations. Tr. 220–221. In addition, Atlantic Veal has never ceased all production activities at its Brooklyn facility. Jt. Ex. 2 ¶ 3. Although all of the six employees laid off on January 29, 2021, and named in the Complaint,[4] were originally slated for layoff on April 30, 2020, none were actually laid off at that time. GC Ex. 4; R.S. Ex. 1.

On May 5, 2020, Carmody responded to Sollicito's April 28, 2020 letter. R.S. Ex. 6. In his letter, Carmody stated that "The Employer still intends to cease production and processing operations, but not before roughly May 30, 2020," and that the closure of these operations would be "permanent." R.S. Ex. 6. Carmody further stated that the request for financial documentation contained in Sollicito's letter was "overly broad," and that information regarding its customers and vendors was "not relevant." R.S. 6. In response to Sollicito's requests for information regarding other processing locations, Carmody stated that, "275 Morgan Avenue, Brooklyn, New York is the only location where the Employer processes food," and that "The Employer does not have any employees assigned to any" other "work location." R.S. Ex. 6. Sollicito testified that at that point he believed, based on Carmody's letter, that the closure and consequent layoffs would take place on or around May 30,

[2] Henry testified that approximately 73 bargaining unit employees voted in the election conducted on December 17, 2019. Tr. 107.

[3] All negotiating sessions took place by conference call due to the impact of the COVID-19 pandemic. R.S. Ex. 4.

[4] Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias.

2020. Tr. 195–196.

The next negotiating session took place on May 6, 2020. At this session, Carmody reiterated that the closure of the production and processing operations would not take place until May 30, 2020. Tr. 212–213. Sollicito testified that early in the negotiations, Carmody had stated that while the company intended to close its production and processing operation in Brooklyn, it planned to continue its distribution operations. Tr. 149. Sollicito testified that he asserted, based on information obtained by Local 342's organizing department, that Atlantic Veal had a facility in Ohio, and also asked whether Respondent had a location in Pennsylvania. Tr. 142–143. At the May 6, 2020 session, Carmody stated in response that Atlantic Veal did not have a location in Ohio, and that Respondent's facility in Pennsylvania had shut down. Tr. 150–151, 194–195. Carmody also rejected the Union's proposals regarding severance pay and health insurance coverage for the employees who would be affected by the upcoming layoff. Tr. 195–196.

The next negotiating session took place on May 27, 2020. At this session, Carmody told the Union that Respondent's plans regarding the closure of production and processing had changed. Tr. 161–162. Carmody stated that Atlantic Veal now intended to maintain its case-ready operation in Brooklyn, which butchers, cuts, and packages meats for sale at retail locations. Tr. 162. Sollicito testified that based upon Carmody's statements that at the time the production and processing operation would remain open, he believed that the closure and layoffs Respondent had discussed earlier were not going to occur. Tr. 213.

During the spring of 2020, some bargaining unit employees who had been laid off in March informed the Union that they had been recalled to work. Tr. 214. After Sollicito learned of the recalls, he raised the issue with Carmody during negotiations. Tr. 214–215. Sollicito testified that he asked Carmody whether Atlantic Veal intended to recall all of the bargaining unit employees it had laid off in March 2020 as the pandemic subsided. Carmody stated that at that point he did not know. Tr. 215.

C. *Bargaining, Information Requests, and Layoffs in Late 2020 and early 2021*

Although bargaining continued, the subject of possible layoffs of bargaining unit employes did not arise again until late fall of 2020, when the parties met for negotiations on December 17, 2020. Sollicito did not attend this session due to health issues, so Chavez represented the Union along with Daniel Gorman, an employee in the Union's contracts department who took notes, and Union attorney Martin Milner. Tr. 41–42, 167–168. Carmody attended for Atlantic Veal. Tr. 42. The parties discussed various proposals that had been exchanged during the previous months. Tr. 42.

Chavez testified that at some point during the meeting, Carmody stated that another layoff would take place during the first quarter of calendar year 2021, in February or March 2021, which would affect the bargaining unit production and processing employees. Tr. 42, 65–68. Carmody stated that Atlantic Veal again intended to permanently close the production component of the business, while continuing its distribution operations. Tr. 42, 43–44. Chavez asked Carmody whether Atlantic Veal would notify the employees and the Union of the layoffs pursuant to the Worker Adjustment Retraining and Notification (WARN) Act, as it had done in the past, and Carmody stated that Respondent would do so if necessary. Tr. 44. Milner then asked Carmody where the product would be produced and who would be producing it if production and processing shut down, noting that if Atlantic Veal intended to maintain its distribution operation it would need to somehow obtain product to distribute. Tr. 44–45. Carmody responded that he did not know and would find out, but also contended that the Union was not entitled to that information. Tr. 45, 69–70. Milner stated that he disagreed with Carmody, and believed that the Union was entitled to information regarding the origins of the product that Atlantic Veal would be distributing. Tr. 45, 70–71.

The Union did not demand bargaining regarding Atlantic Veal's decision to lay off bargaining unit employees at the December 17, 2020 negotiating session, nor did the Union submit proposals in connection with any upcoming layoff of employees. Tr. 68–69.

The next session took place on January 7, 2021. Chavez, Gorman, Milner, and Sollicito attended this session for the Union, and Carmody represented Atlantic Veal. Tr. 45–46. During this session the parties discussed a number of proposals pertaining to the collective-bargaining agreement. Tr. 46. At some point, the Union raised an issue regarding new machines at the Morgan Avenue facility, based upon reports from the bargaining unit employees that there were new machines in the facility wrapped in plastic, which resembled machines used for production and processing. Tr. 47. The Union representatives asked what the machines would be used for, and whether Atlantic Veal was going to continue production and processing at the Morgan Avenue facility. Tr. 47. Carmody stated that the new machines were not in use at the Morgan Avenue facility. Tr. 73. Carmody also stated that Respondent was still planning to shut down its production and processing operation. Tr. 48.

The Union then asked for an update regarding the status of the planned shutdown of production and processing. Tr. 48. Chavez asked again whether Atlantic Veal planned on implementing the WARN Act and notifying the Union "if and when this happens." Tr. 48–49. Carmody responded that Atlantic Veal was still planning to shut down the production and processing operation at some point, but he had no additional information. Tr. 49, 74. The Union did not demand that Atlantic Veal bargain regarding the decision to lay off bargaining unit employees at this session or submit proposals in connection with any upcoming layoff of employees. Tr. 74–75.

At that point, Sollicito believed that Atlantic Veal had placed the parties in a "holding pattern" with respect to anticipated layoffs which could be delayed indefinitely, as had been the case in the spring of 2020. Tr. 217. Sollicito also believed that Respondent's plans with respect to the production and processing operation may have changed, based upon his understanding that a case-ready facility could be established and operating in 30 days. Tr. 218. Sollicito therefore sent Carmody a letter requesting information on January 14, 2021, by e-mail and regular mail. Jt. Ex. 1, ¶ 2; GC Ex. 2; Tr. 49–52. Sollicito's January 14, 2021 letter, received by Carmody on January 19, 2021, states as follows:

> As discussed during bargaining calls on December 17, 2020 and again January 7, 2021, you indicated Atlantic Veal would allegedly be conducting a shutdown of the production portion of the facility during the first quarter which would likely result in more layoffs, however, the distribution portion of the business would continue operat-

ing.

> At this time Local 342 is requesting the employer provide details as to what company or companies will be performing the production that is currently taking place on premise[s] once the shutdown is complete as well as where those companies are located.

Jt. Ex. 1, ¶ 2; Tr. 52. The evidence establishes that the Union never received a response to its January 14, 2021 information request. Tr. 52–53.

The parties next met for negotiations on January 21, 2021, with Chavez, Milner and Gorman representing the Union and Carmody representing Atlantic Veal. Tr. 53–54. After a discussion regarding proposals for the collective bargaining agreement, Carmody confirmed that he had received Sollicito's January 14, 2021 letter requesting information, and stated that he would respond promptly and in writing. Tr. 54, 75–76, 84. The Union representatives asked for any additional information or changes in the employer's stated plan to shutdown the production and processing operation and lay off employees. Tr. 54–55. Carmody stated that he had no new information, but that he would let the Union know if he had any updates. Tr. 55, 84–86.

On January 29, 2021, Atlantic Veal laid off the six bargaining unit employees named in the Complaint's allegations – Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias. Jt. Ex. 2, ¶ 1–2. There is no evidence that Sollicito, Chavez, or any other representative of Local 342 was notified by Respondent before the layoff took place. Tr. 58, 221. Instead, the Union learned of the layoffs when the employees contacted them in early February 2021. Tr. 56–58, 59, 107–109, 111. Henry testified that he contacted all of the laid off employees personally to determine that they had been discharged. Tr. 111–113. He then notified Sollicito and organizing director Liz Fontanez by e-mail. GC Ex. 3; Tr. 120–123. Subsequently, two of the employees laid off on January 29, 2021—Magdaleno Garcia and Ramon Taveras Arias—were recalled to work on April 19, 2021, and April 27, 2021, respectively. GC Ex. 4.

Since January 2021, Local 342 and Atlantic Veal have continued their negotiations for an initial collective bargaining agreement. Jt. Ex. 1, ¶ 1. The parties have stipulated that no bargaining impasse currently exists in connection with the negotiations, and that no impasse existed at any time in either January or February 2021. Jt. Ex. 1, ¶ 1.

DECISION AND ANALYSIS

A. *Preliminary Issues Involving Atlantic Veal's Affirmative Defenses*

Before turning to the specific violations alleged in the Complaint, I will address certain affirmative defenses raised by Atlantic Veal in its Amended Answer. Atlantic Veal contends that the Acting General Counsel and General Counsel lacked authority to issue the complaint and prosecute the instant case. Atlantic Veal further asserts that the complaint's allegation that it unlawfully refused to provide information is precluded because the underlying unfair labor practice charge was filed outside of the 6-month period set forth in Section 10(b) of the Act. Both of these contentions are rejected for the reasons discussed below.

Atlantic Veal asserts in its Answer and its Post-Hearing Brief that the former Acting General Counsel, Peter Sung Ohr, lacked authority to issue and prosecute the Complaint in this case, because the agency's preceding General Counsel, Peter Robb, was unlawfully removed before his term of service ended.[5] In its Post-Hearing Brief, Respondent also asserts that the current General Counsel, Jennifer Abruzzo, lacked authority to prosecute the Complaint on this basis. Atlantic Veal's contentions in this regard are rejected. On December 30, 2021, the Board determined in *Aakash, Inc., d/b/a Park Central Care and Rehabilitation Center,* 371 NLRB No. 46 at slip op. 1-2 (2021) that the president had authority to remove former General Counsel Robb pursuant to *Collins v. Yellen*, __ U.S. __, 141 S. Ct. 1761 (2021) and rejected arguments that Acting General Counsel Ohr and General Counsel Abruzzo lacked the authority to issue and prosecute the complaint in that case as a result.[6] However, although the respondent in *Park Central Care and Rehabilitation Center* contended that Acting General Counsel Peter Ohr lacked authority to issue the complaint, the charge had been investigated, and the complaint issued and prosecuted, by General Counsel Abruzzo. *Park Central Care and Rehabilitation Center*, 371 NLRB No. 46 at p. 1, fn. 2. Subsequently, on February 1, 2022, the Board rejected a contention that Acting General Counsel Ohr lacked authority to prosecute a complaint as a result of the purportedly improper removal of former General Counsel Robb in *Wilkes-Barre Hospital Company LLC d/b/a Wilkes-Barre General Hospital,* 371 NLRB No. 55 at slip op. 1, fn. 2 and see slip op. 4 and 10 (2022). The Board further held in that case that the respondent's argument regarding Acting General Counsel Ohr's lack of authority was rendered moot by General Counsel Abruzzo's two ratifications of the issuance and prosecution of the complaint in that case—the first after she was confirmed and sworn in and the second after former General Counsel Robb's term would have expired absent his removal. *Wilkes-Barre General Hospital*, 371 NLRB No. 55 at p. 1, fn. 2.

Although Post-Hearing Briefs in the instant case had already been submitted when the Board issued its Decisions in *Park Central Care and Rehabilitation Center* and *Wilkes-Barre General Hospital*, I provided the parties with a specific opportunity to address the Board's holdings, and the parties submitted letter briefs on January 14, 2022 and February 8, 2022. In its January 14, 2022 letter brief, Atlantic Veal contends that the Board's Decision in *Park Central Care and Rehabilitation Center* was arbitrary and capricious. In its February 8, 2022 submission, Atlantic Veal argues that I should defer to the federal courts with respect to the issue, which implicates the President's authority. However, as an Administrative Law Judge, I am bound to follow Board precedent that the Supreme Court has not overruled. *Pathmark Stores, Inc.*, 342 NLRB 378, fn. 1 (2004), quoting *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616, enf'd in

[5] Atlantic Veal's Answers, filed on June 23, 2021 and July 31, 2021, allege that Acting General Counsel Ohr "lacks the authority to prosecute the Complaint and any actions taken by or on behalf of Mr. Ohr are *ultra vires*." GC Ex. 1(F, K). Atlantic Veal's Amended Answer, filed on September 8, 2021, alleges that Acting General Counsel Ohr lacked authority to issue the Complaint "and any attempt to prosecute the Complaint is *ultra vires*." GC Ex. 1(N).

[6] In *Park Central Care and Rehabilitation Center*, 371 NLRB No. 46 at p. 1, the Board stated, "Respondent contends that neither Acting General Counsel Peter Ohr nor General Counsel Jennifer Abruzzo had the authority to issue and prosecute the complaint…as a result of the President's purportedly unlawful removal of former General Counsel Peter Robb. We reject the Respondent 's contentions."

part 331 F.2d 176 (8th Cir. 1964); *Los Angeles New Hospital*, 244 NLRB 960, 962, fn. 4 (1979), enf'd. 640 F.2d 1017 (9th Cir. 1981). Thus, pursuant to the Board's decisions in *Park Central Care and Rehabilitation Center* and *Wilkes-Barre General Hospital*, Atlantic Veal's contention that Acting General Counsel Ohr and General Counsel Abruzzo lacked authority to issue and prosecute the Complaint in the instant case is rejected.[7]

Atlantic Veal further contends in its Amended Answer and argues in its Post-Hearing Brief that the Complaint's allegation that Respondent unlawfully refused to provide information is time-barred, because the unfair labor practice charge upon which it is based was filed outside of the Section 10(b) period. See Tr. 8–12. The charge, filed on February 11, 2021, alleges that Atlantic Veal violated Sections 8(a)(1) and (5) of the Act by failing to provide information requested by the Union on December 17, 2020, regarding the source of the product being distributed from the Morgan Avenue facility. Respondent asserts that the Union made "substantially the same information requests" on April 28, 2020, and May 8, 2020, outside of the Section 10(b) period. The Union's May 8, 2020 information request, contained in an e-mail from Sollicito to Carmody, sought information regarding the identity and ownership of any entity from which Respondent intended to obtain meat products for distribution from its Morgan Avenue facility after the production and processing operation at that location shut down. R.S. Ex. 7, p. 3. However, the Board has held that "each information request and each refusal to comply gives rise to a separate and distinct violation of the Act," such that previous requests for information outside the Section 10(b) period are immaterial to the timeliness of the request which is the subject of a complaint's allegations. *Teachers College, Columbia University*, 365 NLRB No. 86 at p. 5 (2017), enf'd. 902 F.3d 296 (D.C. Cir. 2018), quoting *Centinela Hospital Medical Center*, 363 NLRB 411, 412, fn. 6 (2015). The refusal to provide information allegation contained in the instant charge, filed on February 11, 2021, is premised upon the Union's December 17, 2020 information request, reiterated by Sollicito in writing on January 14, 2021, and was therefore filed well within the Section 10(b) period. As a result, Atlantic Veal's contention that the allegations pertaining to an unlawful refusal to provide information are untimely pursuant to Section 10(b) is without merit.

[7] I note that in the instant case, as in *Wilkes-Barre General Hospital*, General Counsel Abruzzo issued a Notice of Ratification on December 20, 2021, after she was sworn in a second time and former General Counsel Robb's term would have expired in any event, ratifying the issuance of the Complaint and the prosecution of the instant case. 371 NLRB No. 55 at p. 1, fn. 2. Atlantic Veal's December 27, 2021 request that I decline to consider General Counsel Abruzzo 's December 20, 2021 Notice of Ratification is rejected. There is no indication in *Wilkes-Barre General Hospital*, or any of the cases cited therein, that a motion to reopen the record was required in order for me to consider the Notice of Ratification, as Respondent contends. 371 NLRB No. 55 at p. 1, fn. 1; see also *Wilkes-Barre Hospital*, 362 NLRB 1212, 1212 fn. 1, 1215–1216 (2015), enf'd. in relevant part 857 F.3d 364, 371–372 (D.C. Cir. 2017); *RTP Co.*, 334 NLRB 466, 466 fn. 1 (2001), enf'd. 315 F.3d 951 (8th Cir. 2003); *NLRB v. Newark Electric Corp.*, 14 F.4th 152, 161–163 (2d Cir. 2021); *Midwest Terminals of Toledo International, Inc. v. NLRB*, 783 Fed.Appx. 1, 6–7 (D.C. Cir. 2019); *Advanced Disposal Services East, Inc. v. NLRB*, 820 F.3d 592, 597–602 (3rd Cir. 2016). Furthermore, Atlantic Veal has provided no legal authority in support of its argument that a motion to reopen the record was required.

B. The Alleged Refusal to Provide Information

The Complaint alleges that Atlantic Veal violated Sections 8(a)(1) and (5) of the Act by refusing to provide information—requested by the Union at negotiations on December 17, 2020 and in writing on January 14, 2021—regarding the identity and location of companies which would be producing the product for distribution in the event that Respondent closed the production and processing operation at the Morgan Avenue facility. In his post-hearing brief, General Counsel argues that Atlantic Veal's failure to provide the requested information was unlawful, in that the requested information was relevant to assertions made by Respondent during negotiations, useful in order for the Union to formulate and respond to bargaining proposals, and obviously pertinent given the context of negotiations for a first contract and impending layoffs. Atlantic Veal contends that it was not required to provide the requested information, because the Union failed to establish its relevance.

An employer's duty to bargain pursuant to Section 8(a)(5) of the Act encompasses a duty to provide information requested by a union which is relevant and necessary for the union's performance of its duties as collective bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 422, 435–436 (1967). Information pertaining to the bargaining unit employees is "presumptively relevant," and must be provided by the employer. See, e.g., *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 2 (2019); *Disneyland Park*, 350 NLRB 1256, 1257 (2007). However, information which does not pertain to the bargaining unit employees is not presumed relevant. Instead, the Board applies a broad "discovery-type standard" to determine whether the union has established sufficient relevance to require that an employer provide the requested information. *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 2; *Disneyland Park*, 350 NLRB at 1258. Thus, the Board has characterized the union's burden in this regard as "not an exceptionally heavy one," requiring only that the union demonstrate a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *SBC Midwest*, 346 NLRB 62, 64 (2005); *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), enf'd. 157 F.3d 222 (3rd Cir. 1998), quoting *NLRB v. Acme Industrial Co.*, 385 U.S. at 437. In addition, the employer may be required to provide information which is not presumptively relevant when its relevance "should have been apparent…under the circumstances."[8] *Disneyland Park*, 350 NLRB at 1258, citing *Allison Corp.*, 330 NLRB 1363, 1367, fn. 23 (2000).

The evidence here establishes that the information requested

[8] Atlantic Veal contends that an employer should not be required to provide information which does not directly pertain to the bargaining unit employees based upon a showing that the information's relevance should have been apparent under the circumstances, referring to *McLaren Macomb*, 369 NLRB No. 73 (2020). In that case, two Board members indicated that they would be open to reconsidering this precept in the future. *McLaren Macomb*, 369 NLRB No. 73 at p. 1, fn. 1. However, Respondent does not provide any binding authority for the proposition that an employer is no longer required to provide information which is not presumptively relevant on such a basis. As an Administrative Law Judge, I am bound to follow Board precedent that the Supreme Court has not overruled. *Pathmark Stores, Inc.*, 342 NLRB at 378, fn. 1 (2004), quoting *Iowa Beef Packers, Inc.*, 144 NLRB at 616. Thus, I will not reevaluate the continued viability of this doctrine.

by the Union during negotiations and in Sollicito's January 14, 2021 letter—the identity and location of entities which would be producing the product that Atlantic Veal intended to distribute from its Morgan Avenue facility after its own production operations shut down—was relevant and would have been useful to the Union in the performance of its duties as collective-bargaining representative. The Board has found that information regarding nonbargaining unit employees may be pertinent to "assess claims made by the employer relevant to contract negotiations." *Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services*, 367 NLRB No. 103 at p. 5 (2019), enf'd. 957 F.3rd 1006 (9th Cir. 2020), quoting *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006); see also *Caldwell Mfg. Co.*, 346 NLRB at 1159, and see fn. 3, 1159–1160, 1166, 1167, 1170 (information regarding "material costs, labor costs, manufacturing overhead, productivity calculations, competitor data, and data on possible new production" relevant to permit union to evaluate employer's "specific factual assertions" regarding the facility's "less-competitive" status and other "bargaining claims"). The Board has further determined that information not directly pertaining to bargaining unit employees may be relevant to the Union's responsibilities in terms of conducting negotiations, specifically with respect to formulating and responding to bargaining proposals. See, e.g., *Caldwell Mfg. Co.*, 346 NLRB at 1169, and at 1160 (information relevant given the "probability" of its usefulness "to the Union in deciding what proposals to accept and make"); *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844, 872 (2001) (information regarding plans to subcontract work necessary for the union to "prepare for collective bargaining"); *Leland Stanford Junior University*, 262 NLRB 136, 152 (1982), enf'd. 715 F.2d 473 (9th Cir. 1983) (information relevant where necessary for the union to "fashion realistic contract proposals"). Finally, information regarding nonbargaining unit employees, particularly information regarding subcontracting, may be relevant to the Union's effective preservation of the work of the bargaining unit which it represents. See *West Penn Power Co.*, 339 NLRB 585, 586 (2003), enf'd. in relevant part 394 F.3d 233 (4th Cir. 2005) (information relevant to "Union's concerns with the maintenance of unit size and the general preservation of unit work"); *Detroit Edison Co.*, 314 NLRB 1273, 1275 (1994) (union's "representational responsibilities…encompass... continual monitoring of any threatened incursions on the work being performed by bargaining unit members"); *Island Creek Coal Co.*, 292 NLRB 480, 490, fn. 18 (1989), enf'd. 899 F.2d 1222 (6th Cir. 1990) ("Without question, information concerning subcontracting of unit work is relevant to a union's performance of its representational functions"). The record evidence in this case establishes a probability that the information regarding the identity and location of the entity which would provide the product that Atlantic Veal intended to distribute from its Morgan Avenue facility after production and processing closed would have been useful to the Union in all three respects.

As Sollicito explicitly stated in his January 14, 2021 letter, the information at issue here was requested in connection with Carmody's representations during the December 17, 2020, and January 7, 2021 negotiating sessions that Atlantic Veal intended to shut down its production operation during the first quarter of 2021, resulting in the layoff of bargaining unit employees, while maintaining its distribution operation at the Morgan Avenue facility.[9] Jt. Ex. 1, ¶ 2. As Milner had elaborated to Carmody at the December 17, 2020 session, if the distribution operation was to remain open after production was shut down, Atlantic Veal would necessarily be obtaining the product it distributed—which the bargaining unit employees were then producing—from another company and/or location. Tr. 44–45, 70–71. The Board has repeatedly found that where subcontracting or other business dealings affect the work of the bargaining unit employees, information regarding such arrangements is relevant to the union's performance of its duties as exclusive collective bargaining representative. See, e.g., *Kauai Veterans Express Co.*, 369 NLRB No. 59 at p. 2, 5–6, 10 (2020) (identity and activities of separate corporate entity relevant to "ascertain whether nonunit employees had been performing bargaining unit work"); *Earthgrains Co.*, 349 NLRB 389, 393-395 (2007), enf'd. in relevant part 514 F.3d 422 (5th Cir. 2008) (information regarding "the precise identity and location of the subcontractor" a "necessary predicate" to determining whether nonbargaining unit employees were performing bargaining unit work); *Allison Corp.*, 330 NLRB at 1364 fn. 8, 1367–1368 (names and addresses of companies from which employer imported products, together with products ordered and amounts paid, relevant to determine the "impact on the bargaining unit" of the imports and "what future effects upon the bargaining unit could be anticipated"). In such circumstances, the employer is required as part of its bargaining obligation to produce information relating to its representations during bargaining regarding business arrangements affecting bargaining unit work. See *Caldwell Mfg. Co.*, supra; *Allison Corp.*, 330 NLRB at 1363–1364, 1367–1368 (subcontracting information relevant given employer's statements during negotiations associating subcontracting with bargaining unit layoffs).

Information pertinent to Carmody's representations regarding the closure of the production and processing operations at Morgan Avenue was particularly critical in the context of the negotiations at issue here. For the record demonstrates that Atlantic Veal's repeatedly mutating representations regarding the closure of production and processing were unreliable. From the period of time before the Union was certified, Atlantic Veal had been claiming that it intended to close the production and processing operation at the Morgan Avenue facility. Since late March 2020, Respondent had been representing to the Union that production and processing would close—first as of April 30, 2020, then as of May 30, 2020, then at some future point—before stating in December 2020 that the closure would take place in the first quarter of 2021. In addition, Atlantic Veal had occasionally qualified its predictions regarding a complete closure of production and processing, as when Carmody stated at the May 27, 2020 session that the production operation would not in fact close entirely, and that Respondent's case-ready operation would continue to function. Despite these various prognostications, the record establishes that the production and processing operation has never been shut down, and in fact it remained functioning at the time of the hearing. In this context, it was entirely reasonable for the Union to inquire, after Carmody represented on December 17, 2020, that distribution op-

[9] Atlantic Veal's contention that the Union failed to explain why the information was necessary other than to state that it was probative of Respondent's motivation in determining whether to shut down the production operation is therefore inaccurate. R.S. Post-Hearing Brief at 11.

eration at the Morgan Avenue facility would continue after production and processing shut down, as to where and how Atlantic Veal would obtain the product to distribute, which was then being produced by the bargaining unit employees.

The record further demonstrates that throughout the period that Atlantic Veal was claiming that it intended to shut down the production and processing operation, the Union was obtaining information from the bargaining unit employees which contradicted this assertion. For example, the Union learned that some of the production employees laid off in March 2020 were recalled later that spring. Tr. 214. In addition, Atlantic Veal initially informed the Union that the six employees laid off on January 29, 2021, and named in the Complaint would be laid off on April 30, 2020, but none were actually laid off at that time. GC Ex. 4; R.S. Ex. 1; Tr. 220–221. Bargaining unit employees also reported that new machines, which resembled machines used for production and processing, had appeared at the Morgan Avenue facility. Tr. 47. However, when the Union raised this with Carmody at negotiations on January 7, 2021, Carmody stated only that the new machines were not being used at the Morgan Avenue facility, and that Respondent still intended to close its production and processing operations there. Tr. 47–48, 73. Based upon the Union's ongoing discovery of practical information which contradicted Atlantic Veal's representations, and Respondent's continually shifting claims regarding the fate of production and processing at negotiations, the Union's attempt to obtain additional information regarding the company's representations on the subject during negotiations was manifestly reasonable.[10] See *Kauai Veterans Express Co.*, 369 NLRB No. 59 at p. 10 (union legitimately requested information regarding work performed by nonbargaining unit employees after bargaining unit layoffs); *Somerville Mills*, 308 NLRB 425, 441–442 (1992), enf'd. 19 F.3d 1433 (6th Cir. 1994) (Union request for identities and locations of subcontractor firms appropriate given bargaining unit employee reports of layoffs, reduction of work hours, and work "shipped out" of the facility).

Furthermore, the evidence establishes that the information requested by the Union was directly and critically pertinent to the preservation of bargaining unit work pursuant to the Union's certification as collective bargaining representative. The record establishes that the production and processing employees at the Morgan Avenue facility were encompassed in the Union's certification as collective-bargaining representative issued on December 17, 2019. Jt. Ex. 1, ¶ 1; Complaint ¶ 4. Indeed, the evidence establishes that the production employees constituted the majority of the bargaining unit employees overall. Tr. 44. As a result, a complete shutdown of production and processing would likely result in the elimination of most of the bargaining unit work, and the layoff of the majority of the bargaining unit employees. The Union was therefore entitled to information regarding how Atlantic Veal would obtain the product that would be distributed from the Morgan Avenue facility—product that would otherwise have been produced and processed by the majority of the bargaining unit employees—in order to preserve bargaining unit work and maintain the integrity of the bargaining unit for which it had recently been certified. See *St. George Warehouse, Inc.*, 341 NLRB 904, 904–905, 925 (2004), enf'd. 420 F.3d 294 (3rd Cir. 2005) (information regarding agencies supplying temporary workers performing bargaining unit work, and their contractual relationships with respondent employer, relevant to newly certified union's concerns regarding "the nature and extent of the use of workers outside the unit…being used to supplant the unit work force" and consequent "erosion of the unit"); see also *Detroit Edison Co.*, 314 NLRB at 1275 (union's representational functions include "continual monitoring of any threatened incursions on the work being performed by bargaining unit members").

All of the circumstances described above also support the conclusion that the relevance of the information requested by the Union should have been apparent to Atlantic Veal as of December 2020 and January 2021, as General Counsel argues. See *Disneyland Park*, 350 NLRB at 1258; *Allison Corp.*, 330 NLRB at 1367, fn. 23. Given the impact on the bargaining unit work and employees that a closure of production and processing would entail, the fluctuating nature of Atlantic Veal's own representations regarding the closure during negotiations, and the information obtained by the Union from the bargaining employees and communicated to Respondent, the relevance of information regarding how Respondent would subsequently obtain the product it intended to distribute was obviously pertinent to the negotiations and to the Union's status as exclusive collective bargaining representative.

Finally, the evidence establishes that information requested by the Union would likely have assisted the Union in formulating and responding to bargaining proposals during negotiations. Determining the origins of the product that would be distributed from the Morgan Avenue facility after the production and processing operation ceased would have facilitated meaningful bargaining on the part of the Union. Such information would have aided the Union in evaluating whether to demand bargaining regarding the decision itself given its impact on bargaining unit work. It would also have assisted the Union in negotiating regarding the effects of the decision on the bargaining unit employees in terms of layoffs (as it had done the previous year) and regarding possible consolidation and changes in bargaining unit work. See, e.g., *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71 at p. 1–2, 13, 19–20 (information regarding subcontracting and assignment of traditional bargaining unit work to nonbargaining unit employees would assist union in formulating bargaining positions, in light of employer's proposal to remove restrictions on subcontracting and end the union's exclusive jurisdiction); *Kolkka Tables and Finnish-American Saunas*, 335 NLRB at 845, 872 (information regarding "any plans the company may have had regarding subcontracting work" relevant to newly certified union's "preparing to negotiate a collective-bargaining contract"). As a result, the evidence establishes that the requested information was likely to assist the Union in the context of collective bargaining negotiations, and was therefore necessary to the Union's performance of its duties as collective

[10] Atlantic Veal argues in its Post-Hearing Brief that the information sought by the Union was irrelevant given information provided in response to other questions the Union posed—in particular Carmody's statements that the Brooklyn facility was Respondent 's only production and processing location, that Respondent had no operative locations in Ohio or Pennsylvania, and that Respondent did not intend to relocate production and processing. Post-hearing Brief at 11–12. Atlantic Veal's responses to these more specific queries, however, do not obviate the relevance of the information requested by the Union regarding how and where Respondent would obtain the product to distribute from the Morgan Avenue facility, once it was no longer being produced there by the bargaining unit employees.

bargaining representative.[11]

For all of the foregoing reasons, the evidence establishes that information regarding the identity and location of the entities from which Atlantic Veal would obtain its product after closing the production and processing operation at the Morgan Avenue facility, requested at the December 17, 2020 negotiating session and in Sollicito's January 14, 2021 letter, was relevant and necessary to the Union's discharge of its responsibilities as collective bargaining representative. As a result, by failing to provide the Union with this information, Atlantic Veal violated Sections 8(a)(1) and (5) of the Act.

C. *The Alleged Unilateral Layoff of Bargaining Unit Employees on January 29, 2021*

The Complaint alleges that Atlantic Veal violated Sections 8(a)(1) and (5) of the Act by laying off six bargaining unit employees on January 29, 2021—Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias—without providing the Union with notice and the opportunity to bargain regarding the layoffs or their effects, and in the absence of an overall impasse in collective bargaining negotiations. General Counsel contends that Atlantic Veal failed to provide the Union with notice and the opportunity to bargain prior to implementing the layoffs, such that the layoffs were a fait accompli at the time that the Union learned that they had occurred. General Counsel further argues that the layoffs were unlawful because no impasse had been reached in negotiations for an initial collective bargaining agreement, and because other unfair labor practices, namely the unlawful refusal to provide information discussed above, were unremedied at the time they took place. Atlantic Veal contends that Respondent's statements to the Union on December 17, 2020 to the effect that layoffs would occur during the first quarter of 2021 constituted sufficient notice of the January 29, 2021 layoffs, and that by failing to subsequently demand bargaining regarding the layoffs the Union waived its right to do so.

It is well-settled that where employees are represented by a union, an employer violates Section 8(a)(1) and (5) of the Act by making unilateral changes with respect to mandatory subjects of bargaining, absent bargaining to impasse. *NLRB v. Katz*, 369 U.S. 736 (1962). Pursuant to Sections 8(d) and 8(a)(5) of the Act, the layoff of bargaining unit employees constitutes a mandatory subject of bargaining. See, e.g., *Thesis Painting, Inc.*, 365 NLRB No. 142 at p. 1 (2017); *Pan American Grain Co.*, 351 NLRB 1412, 1414 (2007), enf'd. 558 F.3d 22 (1st Cir. 2009). Particularly where, as here, a newly certified union is bargaining for a first contract, the prohibition against unilateral changes, and the unilateral layoff of employees in particular, "is intended to prevent the employer from undermining the union by taking steps which suggest to the workers that it is powerless to protect them:"

> Laying off workers works a dramatic change in their working conditions (to say the least), and if the company lays them off without consulting with the union and without having agreed to procedures for layoffs in a collective bargaining agreement it sends a dramatic signal of the union's impotence.

NLRB v. Advertisers Manufacturing Co., 823 F.3d 1086, 1090 (7th Cir. 1987). Consequently, an employer may not lay off bargaining unit employees without providing the union with adequate notice and the opportunity to bargain. *Sunbelt Rentals, Inc.*, 370 NLRB No. 102, at p. 5, 23–24 (2021); *Pan American Grain Co.*, 351 NLRB at 1414; *Davis Electric Wallingford Corp.*, 318 NLRB 375, 375–376 (1995).

The record evidence here establishes that Atlantic Veal did not provide the Union with notice and the opportunity to bargain prior to laying off the six bargaining unit employees on January 29, 2021. There is no evidence that any representative of Local 342 was notified before these layoffs took place, or that Atlantic Veal notified the Union directly when the layoffs were actually implemented. Instead, the evidence demonstrates that the Union learned of the layoffs from the employees themselves, who contacted Henry to inform him, and via Henry's subsequent communications with the laid off employees. The evidence thus establishes that Atlantic Veal laid off the six bargaining unit employees named in the Complaint on January 29, 2021 as a fait accompli, without providing the Union with notice and the opportunity to bargain. See *Stamping Specialty Co.*, 294 NLRB 703, 716 (1989) (employer failed to provide adequate notice of layoff where it did not inform union as to "when the layoff was to occur or who would be involved," information which was only provided to the employees upon their layoff, as opposed to the union).

Furthermore, the evidence overall does not establish that Carmody's statements during negotiations on December 17, 2020, January 7, 2021, and January 21, 2021 constituted effective notice of the layoffs which took place on January 29, 2021, as Atlantic Veal contends. Atlantic Veal argues that by failing to demand bargaining after Carmody's remarks in this regard, the Union waived its right to bargain with respect to the January 29, 2021 layoffs. However, Carmody's statements during these sessions described layoffs which would be engendered by a permanent closure of the production and processing component of Atlantic Veal's business, which Carmody stated on December 17, 2020, would take place during the first quarter of calendar 2021. All of the layoffs described by Carmody and addressed by the parties at those sessions were to be effectuated, according to Carmody, in the context of the closure of the production and processing operation. However, the record establishes that production and processing was never actually closed. In fact, two of the six employees laid off on January 29, 2021, were recalled to work in late April 2021.[12] The evidence therefore does not indicate that the January 29, 2021 layoffs were related to the closure of production and processing described by Carmody during the December 2020 and January 2021 negotiating sessions—a cessation of operations that never actually occurred. As a result, Carmody's remarks at negotiations regarding layoffs in the wake of Atlantic Veal's ceasing its production and processing operations at the Morgan Avenue facility were not related to and did not constitute effective notification to the Union of the January 29, 2021 layoffs.

Atlantic Veal further argues that it provided the Union with adequate notice of the January 29, 2021 layoffs because Carmody had stated at negotiations that Respondent intended to close its production and processing operation at the Morgan

[11] Although Atlantic Veal contended in its Answer to the Complaint that the Union waived its right to obtain the information requested, Respondent does not pursue this argument in its Post-Hearing Brief. As a result I will not address it here.

[12] These two employees were Magdaleno Garcia and Ramon Taveras Arias. Garcia is identified in an employee list prepared by Atlantic Veal as a "roll stock packer," and Taveras Arias' job title is listed as "Whizard knife." R.S. Ex. 1.

Avenue facility and lay off the bargaining unit employees beginning in the spring of 2020. Because, as discussed above, production and processing never in fact closed, this argument is meritless. However, such statements would not constitute legally effective notice triggering a requirement that the Union demand bargaining in any event. Where there is an obligation to bargain, bargaining must occur "in a meaningful manner and at a meaningful time." *First National Maintenance Corp.*, 452 U.S. 666, 681–682 (1981); *Willamette Tug & Barge Co.*, 300 NLRB 282, 283 (1990) (applying fait accompli principle to alleged refusal to engage in effects bargaining). Adequate notice must therefore "afford the union with a reasonable opportunity to evaluate the proposals and present counter proposals" before the change is implemented. *San Juan Teachers Assn.*, 355 NLRB 172, 176 (2010), quoting *Gannett Co.*, 333 NLRB 355, 357 (2001) (bargaining regarding reduction in employee work hours). In this respect, it is well-settled that a union's obligation to request bargaining "may only be triggered by a clear announcement that a decision…has been made and that the employer intends to implement this decision." *Oklahoma Fixture Co.*, 314 NLRB 958, 960–961 (1994), enf. denied on other grounds 79 F.3d 1030 (10th Cir. 1996) (effects bargaining). An obligation to demand bargaining is not engendered by "an inchoate and imprecise announcement of future plans about which the timing and circumstances are unclear." *Oklahoma Fixture Co.*, 314 NLRB at 961 (internal quotations omitted); *San Juan Teachers Assn.*, 355 NLRB at 176; *Hospital San Cristobal*, 356 NLRB 699, 703 (2011) (no legally significant notice provided where "no date was proposed" for the elimination of permanent shifts); see also *Embarq Corp. d/b/a Centurylink*, 358 NLRB 1192, 1193 (2012) (union not required to demand bargaining "at any point before the [employer] confirmed that the decision" to eliminate retail cashier position and discharge cashiers "would be implemented on a specific date"). As the ALJ stated in *San Juan Teachers Assn.*, the Act "does not require a labor organization to demand negotiations every time an employer mentions a potential, future change in order to avoid the risk of waiving its right to bargain under the *Katz* doctrine." 355 NLRB at 176. As a result, Atlantic Veal's communications regarding the purported closure of production and processing in the spring of 2020 did not provide the Union with legally effective notice of the January 29, 2021 layoffs.

The record evidence also establishes that the layoffs unilaterally implemented on January 29, 2021 were unlawful because the parties had not reached impasse in negotiations for an initial collective bargaining agreement, which were ongoing at the time. The parties stipulated that as of the January 29, 2021 layoffs, Atlantic Veal and the Union had not reached impasse in their collective bargaining negotiations. Jt. Ex. 2, ¶ 3. It is well-settled that in the context of negotiations for a collective bargaining agreement, an employer is required to "refrain from unilateral changes…unless and until an overall impasse has been reached on bargaining for the agreement as a whole."[13] *Bottom Line Enterprises*, 302 NLRB at 374; see also *Connecticut Institute for the Blind d/b/a Oak Hill*, 360 NLRB 359, 402–403 (2014); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991) (employer precluded from unilateral changes absent impasse, as "it is difficult to bargain, if, during negotiations, an employer is free to alter the very terms and conditions that are the subject of negotiations"). Thus, absent impasse, Atlantic Veal was prohibited from unilaterally implementing changes in terms and conditions of employment, including the layoff of bargaining unit employees.[14] *Wendt Corp.*, 369 NLRB No. 135 at p. 1, 5–6, 23 (2020) (employer violated Sections 8(a)(1) and (5) by laying off bargaining unit employees during negotiations for an initial collective bargaining agreement, where no impasse had been reached); *Lawrence Livermore National Security, LLC*, 357 NLRB 203, 205–206 (2011) (same).

For all of the foregoing reasons, the evidence establishes that Atlantic Veal laid off Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias on January 29, 2021, without providing the Union with notice and the opportunity to bargain regarding the layoffs or the effects of the layoffs, in violation of Sections 8(a)(1) and (5) of the Act.

D. General Counsel's Request for a Remedial Notice Reading

General Counsel argues that an effective remedy for the violations in the instant cases necessarily includes an order requiring that Atlantic Veal convene a meeting of bargaining unit employees during work time where one of its responsible officials reads the Board's order aloud to the assembled employees, or in the alternative where the order is read by a Board Agent in a responsible official's presence. Tr. 24–25; Post-Hearing Brief at 32–33. Atlantic Veal does not address this issue in its Post-Hearing Brief, but argued at the hearing that such a remedy would not be appropriate in that Respondent is not a "recidivist" and the case did not involve the "hallmark violations" typically associated with a notice-reading. Tr. 25–27.

Pursuant to Board precedent, the violations established in the instant case do not rise to a level of severity which would warrant ordering that the Board's notice be read aloud in the manner requested by General Counsel. It is well-settled that a notice-reading is appropriate where the violations established "are so numerous and serious" that the remedy is "necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion," or where the violations involved are

[13] The Board has recognized two specific exceptions to this general rule, where the union "insists on avoiding or delaying bargaining," and where "economic exigencies compel prompt action" on the employer's part. *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), enf'd. 15 F.3d 1087 (9th Cir. 1994). Atlantic Veal does not contend that either of these exceptions is applicable here.

[14] General Counsel further contends that Atlantic Veal was precluded from implementing changes in the bargaining unit employees ' terms and conditions of employment given its unlawful failure to provide the information requested by the Union on December 17, 2020 and January 14, 2021, a violation which was unremedied at the time of the January 29, 2021 layoffs. However, the cases addressing unilateral changes in the wake of unremedied unfair labor practices premise the unilateral change violation on the absence of an impasse—as a result of the unremedied unfair labor practices—at the time the unilateral changes were implemented. See *Richfield Hospitality, Inc.,* 369 NLRB No. 111 at p. 2–4 (2020) ("serious unremedied unfair labor practices" which affected negotiations precluded a valid impasse such that subsequent unilateral changes were unlawful); see also *Wilshire Plaza Hotel*, 353 NLRB 304, 304–305 (2008); *Dynatron/Bondo Corp.*, 333 NLRB 750, 752–753 (2001). Because the parties have stipulated that there was no impasse in bargaining at the time of the January 29, 2021 layoffs, I need not determine whether the unremedied refusal to provide information precluded a valid impasse. See *Wilshire Plaza Hotel*, 353 NLRB at 304, quoting *Dynatron Bondo Corp*., 333 NLRB at 752 (emphasis in original) ("[n]ot all unremedied unfair labor practices committed before or during negotiations" preclude a valid impasse, only "serious unremedied unfair labor practices that *affect the negotiations*").

"egregious." *Kauai Veterans Express Co.*, 369 NLRB No. 59 at p. 3, quoting *Postal Service*, 339 NLRB 1162, 1163 (2003). The violations established in this case—a refusal to provide information and the unilateral layoff of six bargaining unit employees in violation of Sections 8(a)(1) and (5)—do not rise to this standard under existing Board law. See *Kauai Veterans Express Co.*, 369 NLRB No. 59 at p. 1–3 (unlawful withdrawal of recognition, cessation of dues deduction and payments to union benefit funds, refusal to provide requested information, and polling of employees insufficient basis for ordering a notice-reading); *Queen of the Valley Medical Center*, 368 NLRB No. 116 at p. 1–2, 4 (2019) (notice-reading not warranted where employer unlawfully withdrew recognition and refused to bargain with the union, refused to provide requested information, made unilateral changes in bargaining unit terms and conditions of employment, and committed a *Weingarten* violation).

General Counsel argues that a notice-reading is appropriate based upon the Board's past award of negotiating expenses to a newly-certified union in the face of employer unfair labor practices, citing *Barstow Community Hospital*, 361 NLRB 352, 355 (2014), adopted 364 NLRB No. 52 (2016), enf'd. 897 F.2d 280 (D.C. Cir. 2018). However, the standard for awarding bargaining expenses is qualitatively different from the analysis applied with respect to a notice-reading. While an order that the Board's notice be read aloud is premised upon the atmosphere of coercion created by numerous and egregious unfair labor practices, an award of bargaining expenses is grounded in the detrimental effect of the violations committed on the parties' collective bargaining. See *Barstow Community Hospital*, 361 NLRB at 355–356, quoting *Frontier Hotel & Casino*, 318 NLRB 857, 859 (1995), enf'd. 118 F.3d 795 (D.C. Cir. 1997) (awarding negotiating expenses given that "substantial unfair labor practices have infected the core of the bargaining process," but declining to order a reading of the notice). As a result, the line of cases awarding negotiating expenses is inapposite in the context of General Counsel's request for a remedial notice-reading here.

For all of the foregoing reasons, General Counsel's request for an order requiring that a responsible official of Atlantic Veal read the notice aloud to assembled employees on work time, or that a Board Agent read the notice aloud in a responsible official's presence, is denied.

Conclusions of Law

1. Respondent Atlantic Veal and Lamb, LLC is an employer engaged in commerce at its 275 Morgan Avenue, Brooklyn, New York facility within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food & Commercial Workers Union, Local 342 ("Local 342") is a labor organization within the meaning of Section 2(5) of the Act.

3. Since December 17, 2019, Local 342 has been the certified collective bargaining representative of Respondent's full-time and regular part-time processing and warehouse employees including wrappers, packers, meat cutters, sanitation, mechanics, maintenance, freezer, shipping, and receiving employees employed by the Respondent, excluding all clerical employees, managers, agency employees, sales employees, professional employees, quality control employees, guards and supervisors as defined by the National Labor Relations Act.

4. Respondent failed and refused to bargain in good faith with Local 342 by refusing to provide the Union with information requested on December 17, 2020, and in Louis Sollicito's letter dated January 14, 2021 necessary for the Union to fulfill its responsibilities as exclusive collective-bargaining representative, in violation of Sections 8(a)(1) and (5) of the Act.

5. Respondent laid off Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias on January 29, 2021, without providing the Union with notice and the opportunity to bargain regarding the layoffs or the effects of the layoffs, in violation of Sections 8(a)(1) and (5) of the Act.

6. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the Act's policies. Specifically, having found that Respondent violated Sections 8(a)(1) and (5) of the Act by refusing to provide the Union with information necessary for the Union's discharge of its functions as collective bargaining representative, I will order that Respondent provide the Union with the information requested. Having further found that Respondent violated Sections 8(a)(1) and (5) by laying off six bargaining unit employees without providing the Union with notice and the opportunity to bargain, I shall order Respondent to notify and, on request, bargain collectively and in good faith with the Union before implementing any changes in wages, hours, or other terms and conditions of employment. I shall also order Respondent to offer the six bargaining unit employees that were laid off full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. In addition, I shall order the Respondent to make each of these employees whole for any losses sustained as a result of its unlawful conduct, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate as set forth in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent shall also be ordered to compensate these employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to file with the Regional Director, Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year, pursuant to *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). Respondent shall be further ordered to remove from its files any references to the unlawful layoffs of the six bargaining unit employees, and to notify them in writing that this has been done and that the unlawful actions will not be used against them in any way. Respondent shall be further ordered to remove from its files any references to the unlawful layoffs of the six bargaining unit employees, and to notify them in writing that this has been done and that the unlawful actions will not be used against them in any way. Finally, I shall order Respondent to post and disseminate an appropriate notice.

Respondent shall also be ordered to file with the Regional Director, Region 29, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award within 21

days from the date on which the amount of backpay is fixed, pursuant to *Cascades Containerboard Packaging*, 371 NLRB No. 25 (2021).

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

ORDER[15]

Atlantic Veal and Lamb, LLC, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with United Food & Commercial Workers Union, Local 342, by refusing to provide information requested by the Union on December 17, 2020 and January 14, 2021, which is necessary for the Union to perform its functions as exclusive collective bargaining representative of the employees in the following appropriate bargaining unit:

> All full-time and regular part-time processing and warehouse employees including wrappers, packers, meat cutters, sanitation, mechanics, maintenance, freezer, shipping, and receiving employees employed by the Respondent, excluding all clerical employees, managers, agency employees, sales employees, professional employees, quality control employees, guards and supervisors as defined by the National Labor Relations Act.

(b) Changing the terms and conditions of employment for bargaining unit employees without first notifying the Union and providing the Union with the opportunity to bargain regarding the changes and their effects.

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

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

(a) Provide Local 342 with the information requested at the December 17, 2020 negotiating session and in Louis Sollicito's January 14, 2021 letter regarding the origins of the product which will distributed via the 275 Morgan Avenue facility in the event that the production and processing operation at that location is closed.

(b) Within 14 days from the date of this Order, offer Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make whole Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, in the manner set forth in the remedy section above.

(d) Compensate Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(e) Within 14 days of the date of this Order, remove from its files any reference to the unlawful layoffs of Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias, and within 3 days thereafter notify the employees that this has been done and that the unlawful layoffs will not be used against them in any way.

(f) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, 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 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 Respondent has gone out of business or closed the Brooklyn, New York facility, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since January 1, 2021. Notices shall be posted and otherwise disseminated in English and Spanish.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

(h) Within 21 days of the date the amount of backpay is fixed either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 29 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

Dated, Washington, D.C. February 15, 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 refuse to bargain in good faith with United Food & Commercial Workers Union, Local 342, by failing and

[15] 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.

refusing to provide the Union with information necessary for the Union to perform its duties as the exclusive collective bargaining representative of our employees in the following bargaining unit:

> All full-time and regular part-time processing and warehouse employees including wrappers, packers, meat cutters, sanitation, mechanics, maintenance, freezer, shipping, and receiving employees employed by the Respondent, excluding all clerical employees, managers, agency employees, sales employees, professional employees, quality control employees, guards and supervisors as defined by the National Labor Relations Act.

WE WILL NOT lay you off or otherwise change your terms and conditions of employment without first providing the Union with notice and the opportunity to bargain over the layoffs or other changes, and their effects.

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 provide the Union with the information requested at the December 17, 2020 negotiating session and in Louis Sollicito's January 14, 2021 letter regarding the origins of the product which will be distributed from the 275 Morgan Avenue facility if the production and processing operation at that location is closed.

WE WILL within 14 days from the date of the Board's order, offer Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias full reinstatement to their former jobs or to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias for any loss of earnings and other benefits suffered as a result of their unlawful layoffs.

WE WILL compensate Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 29 a copy of corresponding W-2 forms for Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias reflecting their backpay awards.

WE WILL within 14 days of the date of the Board's order, remove from our files any reference to the unlawful layoffs of Leandro A. Alava Santos, Magdaleno Garcia, Alfredo C. Perez, Osvaldo Sandoval, Juan Santana, and Ramon Taveras Arias, and WE WILL within 3 days thereafter notify them in writing that this has been done and that the unlawful layoffs will not be used against them in any way.

ATLANTIC VEAL AND LAMB, LLC

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/29-CA-272677 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.