UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

ENTERGY OPERATIONS, INC.

and Case 16-CA-328659

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 2286

Alex Romo, Esq., for the General Counsel.
Mr. Michael Murphy, for the Charging Party Union.
Gregory Guidry, Esq., for the Respondent Employer.

DECISION

STATEMENT OF THE CASE

BRIAN D. GEE, Administrative Law Judge. Pursuant to a stipulated record, this case presents the question whether Respondent Entergy Operations, Inc., violated Section 8(a)(5) of the National Labor Relations Act (the Act) by failing and refusing to provide information requested by the Charging Party Union International Brotherhood of Electrical Workers Local 2286?

More specifically, during contract bargaining in 2023, the Union requested wage information for nonunit personnel at another, nonunionized facility operated by Respondent. The Union explained that it needed the information to assess the veracity of a statement made by Respondent's negotiator and that the information could affect its decision to accept or reject Respondent's proposal over employee benefits, a key issue in contract talks. Respondent refused to furnish the information. Nonetheless, the parties continued their negotiations and reached a successor collective-bargaining agreement (CBA). After ratification, Respondent asked if the Union was going to withdraw the instant unfair labor practice (ULP) charge since negotiations had concluded. The Union said it would not, saying that the information would "help the relationship."

As explained below, I find that Respondent violated Section 8(a)(5) by refusing to furnish the information at the time it was requested and should be ordered to furnish it now, since Respondent failed to carry its burden to show that the information is no longer needed and the Union articulated a basis how the information would assist it in carrying out its representational duties to the bargaining unit.

The Union filed the charge in this matter on October 24, 2023, and a copy was served electronically on Respondent on the same date. (Jt. Stip. ¶ 1.)[1] On July 16, 2024, the General Counsel[2] issued a complaint and notice of hearing, which was served on Respondent on the same day. (Jt. Stip. ¶ 4.) On July 29, 2024, Respondent filed a timely answer.[3] (Jt. Stip. ¶ 6.)

On January 13, 2025, pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations, the General Counsel, Respondent, and the Union filed a joint motion to waive a hearing in this matter and to authorize the assigned Administrative Law Judge (ALJ) to issue a decision based on a stipulated record. In their joint motion, the parties made clear that they had not waived their right to file briefs to the ALJ or exceptions to the Board, or to obtain judicial review of either the decision of the ALJ or of the Board. On January 24, 2025, I granted the parties' joint motion and set a briefing schedule.

Based on my careful review of the entire record, including the stipulated record, joint exhibits, and the parties' briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material to the complaint, Respondent has been a corporation with offices and places of business at 5485 U.S. 61 St., Francisville, Louisiana 70775 (the River Bend facility) and 17265 River Road, Killona, Louisiana 70057 (the Waterford III facility), and has been engaged in the production of electricity. During the past 12 months, in conducting its business operations, Respondent purchased and received at its River Bend facility goods and materials valued in excess of $50,000 directly from points outside the State of Louisiana. (Jt. Stip. ¶ ¶ 2, 3.) Based on the foregoing, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all times material to the complaint, the Union has been a labor organization within the meaning of Section 2(5) of the Act. (Jt. Stip. ¶¶ 11, 12.)

II. FACTS

Respondent operates four nuclear power plants through which it produces electricity. The two plants pertinent to this case are both located in the State of Louisiana: River Bend and Waterford III.[4] Respondent employs approximately 748 employees at River Bend and

[1] To aid review, I have included certain citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive, as my findings and conclusions are based on my review and consideration of the entire record.

[2] For brevity, I have referred to former General Counsel Jennifer Abruzzo, current Acting General Counsel William Cohen, and Counsel for the General Counsel as the "General Counsel."

[3] This decision does not address the various constitutional arguments in the affirmative defenses raised by Respondent in its answer but not addressed in its posthearing brief. As the trial judge, my role is to apply current Board and Supreme Court precedent, none of which support such defenses. Respondent may pursue its affirmative defenses based on constitutional arguments, if properly preserved, on appeal.

[4] Respondent's two other plants are located in Russellville, Arkansas, and Port Gibson, Mississippi.

approximately 745 employees at Waterford III, which is located 95 miles south along the Mississippi River. While the Union represents a unit of employees at River Bend, it does not represent any employees at Waterford III. (Jt. Stip. ¶¶ 8, 10-12.)

At all material times, the Union has been the exclusive collective-bargaining representative of a bargaining unit at River Bend based on Section 9(a) of the Act and Respondent has recognized the Union as such. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was executed in January 2024. (Jt. Stip. ¶ 9.) The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All operation and maintenance employees in the Employer's River Bend facility located in the West Feliciana Parish, Louisiana, including control room operators, production technicians, warehousemen, and maintenance employees.
>
> Excluded: Property protection employees, temporary employees, confidential employees, part-time employees, professional employees**,** and supervisors as defined in the National Labor Relations Act as amended.

(Jt. Stip. ¶ 8.)

The parties' penultimate CBA was effective from July 14, 2019, through July 16, 2022. Immediately after the expiration of the CBA, the parties extended it via several Memoranda of Agreement (MOA).

In October 2023,[5] the parties engaged in negotiations for a successor CBA. The key issues were wages and employee health and retirement benefits. (Jt. Stip. ¶ 20.)

On October 17, at an in-person bargaining session, Johnny Johnson, the Union's Business Manager and Financial Secretary, presented evidence of wages for employees at Waterford III who held positions identical to unit employees at River Bend. Respondent's Labor Relations Manager Charles MacLeod responded that the Union's evidence and understanding of the Waterford III employees were incorrect. This caused Johnson to orally request that MacLeod present evidence to support his claim. MacLeod refused to do so, asserting that any such information was proprietary and privileged. (Jt. Stip. ¶¶ 14, 15, 21.)

Later that day, Johnson emailed a written information request to MacLeod to request a list of the current classifications and rates of pay for employees at Waterford III in positions equivalent to bargaining unit positions at River Bend. Johnson explained that the Union needed that wage data for nonunit personnel to verify the assertion made by MacLeod: "In our last table session, you stated the Waterford III rates of pay the Union provided were inaccurate and in most cases were off by as much as five dollars per hour." Johnson added that the information was needed to "verify the accuracy of this statement." (Jt. Stip. ¶ 22, Jt. Exh. 2.)

By email dated October 18, MacLeod denied the information request. He asserted that the Union's proffered reason for the wage information did "not provide a basis for obtaining such

[5] All dates are for the year 2023, unless specified otherwise.

information." MacLeod also said that Respondent had made no contract proposal based on such wage information, "The Company has not made any proposal based on such information or otherwise cited to or relied on such information as a basis for any bargaining position." (Jt. Stip. ¶ 23, Jt. Exh. 3.)

On October 23, Johnson emailed MacLeod a letter to provide "Further Clarification" of the reasons why the Union needed the information. Johnson represented that during negotiations the company had proposed that the Union forego certain employee benefits (e.g., elimination of the cash balance pension for new hires and a lower tobacco usage surcharge for health insurance) and accept the "Entergy System Benefits," which would purportedly result in reduced benefits for unit employees (e.g., new hires not receiving any cash balance pension and a higher tobacco usage surcharge). Johnson said that the Union was open to accepting the company's proposal, as long as Respondent agreed to pay unit employees higher wages and thereby close the pay disparity between nonunit Waterford III and unit River Bend employees. Johnson asserted that, during bargaining, he had presented evidence that the Waterford employees III earned higher wages than the unit employees at River Bend performing identical roles, but that MacLeod countered that the Union's wage data was inaccurate. At that point, Johnson explained that the Union needed information to assess the veracity of MacLeod's claim:

> As stated above, the Union's openness to your benefit proposal is contingent upon equalization of the pay rates between bargaining unit employees and Waterford III employees performing identical roles. Your claim that our information regarding those pay rates is inaccurate must be verified in order for us to evaluate your benefit proposal.
>
> Though the information we have requested may not be presumptively relevant, we do have the right to verify claims that are material to our consideration of your benefit proposal. If your claim regarding the wages actually paid to Waterford III employees was important enough to raise in bargaining then it is important enough to require proof of its accuracy.

(Jt. 4.)

On October 24, MacLeod emailed Johnson a letter reiterating Respondent's refusal to provide the requested information. (Jt. Stip. ¶¶ 24, 25, Jt. Exhs. 4, 5.)

On October 30, the parties executed a Memorandum of Agreement, extending the expired CBA indefinitely. (Jt. Stip. ¶17, Jt. Exhs. 7, 8.)

On December 14, the parties reached a tentative agreement for a new CBA. On January 5, 2024, the Union's membership ratified the successor CBA.

On January 8, 2024, Respondent Labor Relations Director Cesar Reyes asked Johnson whether, in light of ratification, the Union intended to withdraw its ULP charge. Johnson said, "No, sir. Our membership wants to proceed with it." He added, "It will help the relationship if we receive the data and it shows what the company claimed in negotiations turns out to be true." (Jt. Stip. ¶¶ 15, 19, Jt. Exh. 6.)

Respondent has not provided the Union with any of the requested information. (Jt. Stip. ¶ 26.)

III. ANALYSIS

An employer's duty under Section 8(a)(5) of the Act to bargain collectively and in good faith with their employees' representative includes providing requested information which is relevant and necessary to the union's performance of its representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 431 (1967). Among the various types of information which are to be produced is "information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159 (2006). While information pertaining to unit employees is presumptively relevant, information relating to nonunit personnel is not. For the employer to be required to furnish it, the union must establish its relevance. However, such a showing is "not exceptionally heavy" and the Board uses a broad discovery standard when deciding that question. *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 2 (2018).

In the instant case, when it requested information pertaining to non-unit personnel at Waterford III, the Union explained the relevance. During the October 17 bargaining session, Johnson presented evidence about the earnings of employees at Waterford III who held positions identical to unit employees at River Bend. MacLeod countered that the Union's information was inaccurate. This caused Johnson to request that wage data. MacLeod refused to provide it, asserting that the information was "proprietary and privileged."[6] In his October 17 letter, Johnson explained that he requested the information because MacLeod said the Union's data was incorrect. Additionally, in his October 23 "further clarification," Johnson elaborated that the information was needed for the Union to properly consider Respondent's proposal for benefits—that MacLeod's claim "that our information regarding those pay rates is inaccurate must be verified in order for us to evaluate your benefit proposal." Based on these communications, I conclude that the Union showed that the information was relevant and necessary to its evaluation of Respondent's benefits proposal.

Additionally, the Board has recognized that—in situations like this one where the union needs information about nonunit personnel to assess the veracity of claims made during bargaining by the employer's representatives—the nonunit information has been rendered relevant. In short, the information was made "contextually relevant." The Board's decision in *Management & Training Corp.*, 366 NLRB No. 134 (2018), explained this principle. In that case, the union heard rumors that nonunit security guards had received a raise and some managers may have received bonuses. It then confronted the employer with these rumors to counter the employer's refusal during bargaining to grant unit employees either raises or bonuses. The employer denied that managers had received bonuses, asserted that nonunit employees now had a different pay scale, and stated that some nonunit positions had been given raises to comply with Department of Labor requirements. This caused the union to request that the employer furnish it with information related to pay and benefits for certain nonunit positions,

[6] In its brief, Respondent raised neither defense.

as well as limited financial information. The employer refused to do so. The Board deemed the information to be "contextually relevant" because the union needed it to assess the truthfulness of the employer's claims and to formulate its own bargaining proposals. Therefore, the Board held that the employer violated Section 8(a)(5) by not providing the information. Slip op. at 2–3. Similarly in *Brazos Electric Power Cooperative, Inc*., 241 NLRB 1016, 1018 (1979), the Board found that the union's request for wage rates and increases for nonunit employees was relevant to the union's preparation of bargaining proposals in the upcoming negotiations. See also *KLB Industries, Inc. dba National Extrusion & Mfg. Co*., 357 NLRB 127, 128 (2011) ("an employer's duty to bargain includes a duty to provide information that would enable the bargaining representative to assess the validity of the claims the employer has made in contract negotiations."); *Caldwell Mfg. Co*., 346 NLRB 1159, 1159 (2006) ("an employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations.").

Because the information was shown to be relevant, Respondent was required to furnish it, absent a valid defense—which it failed to establish. I find no merit to either of the two defenses raised by Respondent in its brief. Respondent first argues that the Union's request was not relevant at the time it was made because the information was not needed to police a CBA violation, was not needed to process a grievance, and Respondent did not "put any non-bargaining unit wage information at issue."[7] Contrary to this argument, Respondent clearly put the wage rates of the Waterford III employees at issue when MacLeod claimed that Johnson's data was incorrect. Respondent's second argument is that the Union's request is now moot since the parties signed a successor CBA. But this point confuses mootness (which affects the remedy) with relevance (which affects whether there was a violation). The Board has made clear that, "the issue of whether there is a violation is to be determined by the facts as they existed at the time of the union's request." *Borgess Medical Center*, 342 NLRB 1105, 1107 (2004). When the Union requested this information in 2023, the parties were engaged in bargaining, and so the information was relevant and necessary. To the extent that Respondent argues that it should not be required to furnish the information now that contract negotiations have concluded, that is a remedial issue and is thus discussed in the Remedy section below.

Based on the foregoing, I find that Respondent violated Section 8(a)(5) by failing and refusing to furnish the Union with the requested information related to non-unit personnel at Waterford III, as alleged in complaint paragraph 9.

CONCLUSIONS OF LAW

1. Respondent Entergy Operations, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. International Brotherhood of Electrical Workers, Local 2286, is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to furnish the Union with requested information that was necessary and relevant to the performance of its duties as the bargaining

[7] In its brief, Respondent included no citations to support its suggestion that there are only three situations where the Board will find relevant information about nonbargaining unit employees.

representative of the bargaining unit, Respondent violated Section 8(a)(5) and (1) of the Act.

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

REMEDY

Having found that Respondent engaged in certain unfair labor practices, I recommend that the Board order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act. In addition to this finding that Respondent unlawfully failed and refused to furnish requested information, I must consider whether it would be appropriate for the Board to order it to provide the information now, more than a year after the parties reached a successor CBA. *Boeing Co*., 364 NLRB 158, 161 (2016); *Borgess Medical Center*, 342 NLRB 1105, 1106–1107 (2004).

In *Boeing*, the Board established the framework for litigating the remedial issue whether the requesting union still needs the information and whether the employer must furnish it, despite the occurrence of events potentially mooting the request, such as the reaching of a CBA. The Board held that, if the remedial question is being litigated alongside the ULP merits and the employer argues that the union no longer needs the information, it must introduce the relevant evidence and argue the issue. The General Counsel and the union may then contest the employer's claim and/or "state an ongoing need for the requested information and to introduce evidence accordingly." The Board expressly stated that the "employer bears the burden of proof establishing that the union has no need for the requested information" and that "execution of a collective-bargaining agreement does not necessarily eliminate the need for relevant information that was requested by the union during bargaining." Id. at 161, fn. 10.

Respondent argues that the Union no longer needs the information since the parties reached a new CBA and that the Union's basis for its continued need—that "it will help the relationship if we receive the data and it shows what the company claimed in negotiations turns out to be true"—is an insufficient basis for requiring production. Respondent therefore contends that it should not be required to produce the information. (R. Br., p. 2.) In response, the General Counsel asserts that the Union's continued need for the information is "so it can formulate strategies for future matters or issues between the parties." (GC Br. 12.) In its brief, the Union stated no basis why it has a continuing need for the information. The only reason proffered by the Union was what it stated in 2023: it will "help the relationship."

Having carefully considered this issue, I conclude that it would be appropriate to order Respondent to produce the information. First and foremost, Respondent failed to carry its burden to show that the Union has no need for the information. The Board has placed this initial burden on the employer. *Boeing*, supra, at p. 161. See also *Borgess Medical Center*, 342 NLRB 1105, 110 (2004). Second, the Union's reason for still needing the information—it will help the relationship if the data verifies Respondent's claims in bargaining—relates directly to its representational duties as the employees' representative and points to the possibility to smoother negotiations going forward. The Union thus proffered a valid basis for still needing the information. While no evidence supports the General Counsel's argument—to formulate strategies for the future—the Board has recognized that as a basis for needing the information.

Dodger Theatricals Holdings, Inc., 347 NLRB 953, 972 fn. 44 ("Although the 2004 contract has been negotiated and agreed on, the issue is not moot, since by the time this case is finally decided by the Court of Appeals, it could very well be time to negotiate a new agreement.")

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

ORDER

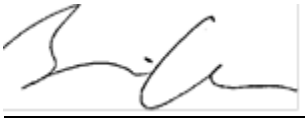
Respondent Entergy Operations, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from
   (a) Refusing to bargain collectively with International Brotherhood of Electrical Workers, Local 2286 (the Union), by refusing to furnish requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees.
   (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
   (a) Furnish the Union with the information it requested on October 17, 2023: a list of all employees at Waterford III, along with their current classification and current rate of pay for all equivalent positions that would fall under the bargaining unit at the River Bend Station facility.
   (b) Within 14 days after service by the Region, post at its River Bend Station facility copies of the attached notice marked "Appendix" in English and any other language deemed appropriate by the Regional Director. [9]
   (c) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

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

[9] If the facility involved in this proceeding is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility is 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 facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." f 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."

Dated, Washington, D.C., June 5, 2025.



Brian D. Gee
Administrative Law Judge

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local 2286 (the Union) by failing and refusing to furnish requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our employees.

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

WE WILL furnish the Union with the information it requested on October 17, 2023: a list of all employees at Waterford III, along with their current classification and current rate of pay for all equivalent positions that would fall under the bargaining unit at the River Bend Station facility.

ENTERGY OPERATIONS, INC.

Dated _____ _____
(Employer)

By _____ _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with

the Board's Regional Office set forth below. You may also obtain information from the Board's website:.

819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107; (415) 356-5130
Hours of Operation: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/ 16-CA-328659 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

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER