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

EXXONMOBIL CHEMICAL COMPANY

Respondent

Cases 16–CA-229107
16–CA–272162
16–CA–272174
16–CA–277138
16–CA–278265
16–CA–282663
16–CA–282702
16–CA–283349
16–CA–283509

and

EXXONMOBIL CHEMICAL COMPANY (LAB)

Respondent

and

Cases 16–CA–229113
16-CA-272170
16-CA-272184
16-CA-277140
16-CA-282669
16-CA-282734
16-CA-283505

EXXONMOBIL FUELS & LUBRICANTS

Respondent

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION LOCAL 13-2001

Charging Party

Cases 16-CA-229124
16-CA-271693
16-CA-271696
16-CA-272155
16-CA-272187
16-CA-272473
16-CA-277156
16-CA-282643
16-CA-282746
16-CA-283493

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(ExxonMobil Corporation), for the Respondent.

Patrick Flynn, Esq. (Patrick M. Flynn, P.C.), and
Sasha Shapiro, Esq. (*United Steelworkers),*
for the Charging Party.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Houston, Texas, as well as via video over the course of 13 days from September 18, 2023, to February 16, 2024.[1] The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 13-2001 (Charging Party or Union or USW Local 13-2001) filed charges and amended charges, as captioned above, from October 11, 2018, through November 18, 2021, against ExxonMobil Chemical Company, ExxonMobil Chemical Company (Lab), and ExxonMobil Fuels & Lubricants (collectively, Respondent or the Company).[2] The General Counsel issued several complaints and notices of hearing, dated August 9, 2021, and September 27, 2021, which were eventually consolidated in the March 3, 2023, third consolidated complaint and notice of hearing which was amended on

[1] The video segment of this hearing covered the production of documents subpoenaed by the parties. Opening statements and witness testimony occurred in person beginning on January 16, 2024.

[2] On the dates specified, the Union filed the following charges and amended charges which resulted in the third consolidated complaint: 16–CA–229107 on October 11, 2018; 16–CA–229113 on October 11, 2018; 16–CA–229124 on October 11, 2018; 16–CA–271693 on January 22, 2021; 16-CA–271696 on January 22, 2021; 16–CA–272162 on February 1, 2021; 16–CA—272170 on February 1, 2021; 16–CA–272174 on February 1, 2021; 16–CA–272184 on February 1, 2021; 16–CA–272187 on February 1, 2021; 16-CA-272155 on February 2, 2021; 16–CA–272473 on February 9, 2021; 16-CA-277138 on May 13, 2021; 16—CA–277140 on May 13, 2021; 16–CA–277156 on May 13, 2021; 16–CA–278265 on June 8, 2021; 16–CA–282643 on September 8, 2021; 16–CA–282663 on September 8, 2021; 16–CA–282669 on September 8, 2021; 16–CA–282702 on September 9, 2021, amended on November 18, 2021; 16–CA–282734 on September 9, 2021, amended on November 18, 2021; 16–CA–282746 on September 9, 2021, amended on November 18, 2021; 16-CA-283349 on September 22, 2021; 16–CA–283493 on September 24, 2021; 16–CA–283505 on September 24, 2021; and 16–CA–283509 on September 24, 2021.

September 15, 2023 as well as at the hearing. Respondent filed timely answers to the third consolidated complaint and its amendments, denying all material allegations.

Specifically, in the consolidated and amended complaint (complaint), the General Counsel alleges that Respondent violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the Act) when:

(1) Repudiating the parties' grievance procedure which was agreed upon in a side letter of agreement on May 26, 2020, and September 15, 2020;

(2) Making unilateral changes to employees' working conditions, between October 18, 2018, and September 15, 2021, which includes the Perfect Attendance Program, the award recognition associated with the Safe Work Practices Team, the Slider Pay Policy, and the Performance Assessment Forms; and

(3) Untimely or failing to respond to information requests submitted between May 14, 2019, and September 2, 2021.

The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act when locking the union president's work door in mid-December 2020 and denying the union president's leave requests in December 2020 and January 2021.[3]

In making this decision and recommended Order, the entire record[4] which includes numerous exhibits, and witness testimony and demeanor was considered.[5] The posthearing briefs, supplemental posthearing briefs which were invited due to a change in the National Labor Relations Board (the Board) law, and other motions and briefs filed by the General Counsel, the Charging Party, and Respondent were considered as well.[6]

[3] I granted the General Counsel's request to amend the complaint at trial as follows: withdraw complaint paragraphs (pars.) 11(l), 11(m), 12(l), and 12(m) (Transcript (Tr.) 85–86); complaint paragraph (par.) 12(kkk) to read, "From about July 1, 2021 until May 16, 2022, Respondent unreasonably delayed in furnishing the Union with the information requested by it, as described above in par. 11(vvv)" (Tr. 86–87); and complaint par. 8(a) to withdraw "December 15, 16, and 17, 2020, and January 11, 2021" and to add, "December 21 and 22, 2020" (Tr. 88–90, 600).

[4] The transcripts and exhibits in this case are generally accurate except Tr. 318, Line (L.) 23: "marketing" should be "bargaining"; Tr. 324, L. 15: "Korky" should be "pokey"; Tr. 735, L. 23: "2026" should be "2016"; Tr. 754, L. 15: "mute" should be "moot"; Tr. 1039, L. 4: "unfilled" should be "unfair"; Tr. 1056, L. 15: "march" should be "March"; and Tr. 1201, L. 23: "agreements" should be "grievance."

[5] Although I have included several citations to the evidentiary record in this decision to highlight testimony or exhibits, I emphasize that my findings and conclusions are not based solely on those citations but rather are based on my review of the entire record for this case.

[6] Other abbreviations used in this decision are as follows: "GC Exh." for the General Counsel's exhibit; "R. Exh." for Respondents' exhibit; "Jt. Exh." for Joint Exhibit; "GC Br." for the General Counsel's Brief; "CP Br." for Charging Party's Brief; "R. Br." for Respondents' Brief, and "p." for page number.

FINDINGS OF FACT AND LEGAL ANALYSIS

I. JURISDICTION AND LABOR ORGANIZATION STATUS

At all material times, ExxonMobil Chemical Company, ExxonMobil Chemical Company (Lab), and ExxonMobil Fuels & Lubricants has been a Texas corporation, with multiple offices and places of business in the State of Texas, including the ExxonMobil Baytown Complex, located in Baytown, Texas (Baytown facility or complex), and has been engaged in the business of refining and distributing oil and gas, and producing and distributing various chemicals. Annually, Respondent sold and shipped from its Baytown facility goods valued in excess of $50,000 directly to points outside the State of Texas. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Furthermore, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 13-2001 has been a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, this dispute affects commerce, and the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. General Credibility Standards

Generally, a witness' credibility may be based on his demeanor as well as the weight of the evidence, established or admitted facts, inherent probabilities and reasonable inferences from the record as whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Corroboration and relative reliability of conflicting evidence is also significant. See *Precoat Metals*, 341 NLRB 1137, 1150 (2004) (lack of specific recollection, general denials, and comparative vagueness insufficient to rebut more detailed testimony). Moreover, a credibility assessment based on demeanor also includes an examination of "the expression of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during examination, the modulation or pace of his speech, and other non-verbal communication." *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996) (citing *Penasquitos Village v. NLRB*, 565 F.2d 1074, 1078–1079 (9th Cir. 1977)), cited with approval by the Board in *Daikichi Sushi*, supra. Additionally, it is well established that the trier of fact may believe some, but not all, of a witness' testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950).

The Board will "attach great weight to [an Administrative Law Judge's (ALJ)] credibility finding insofar as they are based on demeanor" as the ALJ has the benefit of observing the witnesses that testify. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, 545 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). Weight is given to the ALJ's credibility determination as the ALJ "sees the witnesses and hears them testify, while the Board and the reviewing court look only at the cold records." *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). However, when credibility resolutions are not based on demeanor, the Board may make an independent evaluation of credibility, based on derivative record inferences such as the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the entire record. *Capstone Logistics LLC*, 372 NLRB No. 124, slip op.

at 1 fn. 1 (2023) (citing *Storer Communications*, 297 NLRB 296, 296 fn. 2 (1989)); see also *E.S. Sutton Realty Co.*, 336 NLRB 405, 407 fn. 9 (2001) (Board overturned ALJ credibility determination where documentary evidence proved witness's testimony was inaccurate).

Although many of the facts in this matter are uncontested, there remain a few areas at issue in which the credibility of witnesses is crucial and leads to a conclusion about whether the Act was violated as alleged. With the above tenets in mind, the specific credibility determinations, including as appropriate, demeanor evaluations, when relevant, are explained.

Overall, Union President and Business Agent Ricky Brooks (Brooks) was a zealous advocate for the Union. However, Brooks' testimony tended to exceed the scope of the question at times and other times appeared vague and unclear. On cross-examination, Brooks often would not answer questions directly, even when questions were restated or rephrased for him. At times, when pressed on a particular action and why he acted in such a manner, Brooks would become argumentative providing incoherent and meaningless responses. This reticence to provide straight-forward answers with an argumentative tone undermined his overall credibility.

Respondent's senior labor advisor, Gregory Ford (Ford), appeared to be a credible witness, but at times could not recall details or testified vaguely and speculatively. Further, the contrast between Brooks' and Ford's personalities became quite apparent. Brooks is loquacious and writes in an unnecessarily confusing manner where his arguments may not be discernable. Ford preferred to communicate verbally and succinctly and did not care for written correspondence. This dramatic contrast in personalities as well as communication approach impacted the labor-management relationship between the Union and Respondent. Their conversations appeared at times to be two ships passing through the night where they simply did not communicate effectively to address their continual problems in resolving their workplace issues. Surprisingly, at the hearing, Brooks and Ford maintained a good relationship, and Brooks testified that Ford was "as honest as he can be" (Tr. 400).

All other witness credibility will be discussed herein where necessary.

B. Background: the Baytown Facility and the Union

Respondent's Baytown facility consists of the Chemical Plant (Chem Plant), the Laboratories (Lab), and Fuels & Lubricants (Refinery) (Tr. 110, 267–269).[7] Since the early 1960s, the Union has represented these three bargaining units. There are approximately 1000 employees across the bargaining units, and a total of approximately 4000 employees at the Baytown facility (Tr. 109, 111, 201).

[7] The production and maintenance employees employed at the Chem Plant constitutes a unit appropriate for purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. The technical employees employed at the Lab constitutes a unit appropriate for purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. The production and maintenance employees employed at the Refinery constitutes a unit appropriate for purposes of collective bargaining within the meaning of Sec. 9(b) of the Act.

Since about 1963, Respondent and the Union have entered successive and separately negotiated collective-bargaining agreements (CBA) for each bargaining unit, which have the same effective dates (Tr. 112). On February 3, 2021, the Union and Respondent agreed to extend the Refinery, Chem Plant, and Lab CBAs via memorandum of agreements from May 15, 2023, through May 15, 2027 (Tr. 111, 1171–1174; R. Exh. 65, 66, 67). As relevant to this proceeding, prior to the current agreements, the Chem Plant and Lab bargaining units agreed to extend their CBAs (term of May 15, 2020, to May 15, 2023), but the Refinery bargaining unit employees voted against an extension (Tr. 992). Thus, the parties negotiated a memorandum of agreement (MOA) for the Refinery bargaining unit which was signed on May 26, 2020. This MOA was in effect from May 15, 2020, through May 15, 2023, and contained a side letter of agreement concerning the grievance procedure (Tr. 111, 143; GC Exh. 42–51). This grievance procedure was later applied to the Chem Plant and Lab bargaining units on September 15, 2020.[8]

Ford and subsequently, after Ford's retirement in September 2021, Patrick Fields (Fields), who is a labor advisor, communicated with the Union on behalf of Respondent (Tr. 744–745, 1041, 1133). Ford and Fields responded to the Union's grievances and information requests and participated in bargaining as Respondent's representative (Tr. 748–749, 1133–1134). Ford was also present during negotiations for the Refinery MOA.

Brooks has been the president and business agent of the Union since 2010 and represented Refinery bargaining unit employees since 1999 in various union roles (Tr. 108, 396). Brooks exclusively handles all grievances and arbitrations for the Union (Tr. 110, 396–397). Brooks and Ford, and later Fields, communicate multiple times daily, as Brooks, on behalf of the Union, files many grievances and information requests (Tr. 202–203, 400, 977). To that effect, yearly, the Union files about 125 and 200 grievances (Tr. 484, 558, 957–958), and about 150 information requests (Tr. 750). During those correspondences, Brooks informed Ford and Fields that only he could present grievances to Respondent except for rare circumstances such as any illness, and he has done so since 2010 (Tr. 397–398, 558, 749, 1135).

From May 2010 to July 2020, Brooks worked exclusively as the Union president and business agent, and did not perform job duties for Respondent; Brooks' salary was paid by the Union (Tr. 333–334, 401). However, due to the parties' agreement memorialized in the MOA (Section 3), Brooks returned to work as a process technician on the dayshift in the Baytown Overland Shipping Services (BOSS), Extractions Section Scale House (scale house) in July 2020 (Tr. 334–335, 401–402; GC Exh. 41). As a process technician, Brooks weighs products before those products leave the Baytown facility. When Brooks returned to work in the scale house, he worked with two contract employees, who are not directly employed by Respondent (Tr. 886–888). Brooks continued as union president, and per the MOA, could request unpaid time to conduct union business provided he gave as much advance notice of the request as practicable to his supervisor, and his supervisor should grant the request consistent with work demands (GC Exh. 51).

C. The CBAs' Grievance Procedure Through May 15, 2020

[8] As part of May 2023 CBA extensions for all three bargaining units, the Union and Respondent agreed to abandon the side letter of agreement concerning the processing of grievances.

Prior to the MOA, the three CBAs contained similar grievance provisions which had not significantly changed since at least 2010 (Tr. 120–121; GC Exh. 42, 43, 44, 45, 46, 47). The grievance process for the Refinery and Chem Plant bargaining units was at article 14 and for the Lab bargaining units at article 20 (Tr. 113; GC Exh. 48, 49, 50).

At the first step, the aggrieved or union steward may request a conference with the appropriate second-line supervisor or designee provided the grievance is in writing and presented within 30 calendar days from the date of occurrence and the aggrieved or union steward notifies the first-line supervisor 5 days prior to the filing of the grievance. If the grievance is not heard by the second-line supervisor or designee within 15 days of the request for a conference has been made or satisfies it within 15 days after the conference ends, the aggrieved or Union may present the grievance within 20 days to the manager. At the second step, if the manager or designee does not arrange a conference within 15 days after the request, or if the grievance is not satisfied within 15 days after the conference ends, the Union may proceed to arbitration if eligible. The calculations of days do not include Saturdays, Sundays, or holidays, and Respondent shall provide responses in writing.

Grievances may be filed as a "class" for those with similar issues or concerns; since 2010, the Union does not appear to have filed any class grievances, and instead files individual grievances which concern similar issues (Tr. 559; see R. Exh. 24–28). When filing a grievance, the Union would provide Respondent with the following information: grievant's name, work location, manager's name, complaint, alleged violation, date, and CBA articles involved and requested remedy.

Following the grievance procedure in the CBAs, the Union would send Ford a list of grievances to be heard periodically. Ford and his staff would then select one to two grievances to be heard and inform the Union via meeting notices (Tr. 747–748, 759–760, 762). The Union would describe these grievances in simple terms such as "unjust discipline" or "inadequate pay" (Tr. 760–761). Ford did not know any details about these grievances until the second-line supervisor and he would meet with the Union and grievant (Tr. 762). Ford testified that Respondent had difficulty in productively participating in the grievance process because of the number of union grievances filed and not knowing the details of the grievance to know which supervisors needed to be present for the grievance meetings (Tr. 975–977).

Despite the grievance procedure set forth in the CBAs, a backlog of grievances existed for all three bargaining units, particularly in the Refinery bargaining unit (approximately 400) (Tr. 146). Thus, during negotiations for the Refinery successor CBA in May 2020, the Union sought to modify the grievance procedure to address and resolve the backlog (Tr. 144, 146, 977, 989, 1008). These negotiations resulted in the May 15, 2020 MOA which contained a side letter of agreement concerning the grievance procedure.

The parties stipulated that for grievances filed during the terms of the 2016 and 2020 CBAs, Respondent and the Union settled approximately 37 to 45 grievances, arbitrated approximately 14 to 19 grievances, and withdrew (or union stewards voted not to arbitrate) approximately 104 to 122 grievances (Tr. 1277).

D. The MOA Side Letter of Agreement in effect from May 15, 2020, through May 15, 2023

For the Refinery MOA negotiations, which were held at a hotel in May 2020, Brooks and United Steel Workers International Representative Richard "Hoot" Landry (Landry) represented the Union, and Ford, senior labor counsel Craig Stanley (C. Stanley), human resources advisor Grant Clifton (Clifton), process manager Russ Adamson (Adamson), Human Resources Operations Manager Lindsey Naquin (Naquin), and Human Resources Manager Josh Lopez (Lopez) represented Respondent (Tr. 755–757, 991).[9] The parties met in person for bargaining albeit spaced apart due to the Coronavirus Disease 2019 (COVID-19) pandemic (Tr. 971, 998). The Refinery MOA was signed by Brooks, Lopez, and Landry on May 26 and 27, 2020.

The parties agreed in the side letter of agreement (grievance side agreement) at number 17 that any grievances filed between May 15, 2016, and May 15, 2020, would be heard as follows:

- Step 1: From May 26, 2020, through October 31, 2020, human resources would schedule a total of three full business days for the Union to present these grievances. Respondent would provide a written response (Section 5(a)).
- Step 2: Withdrawal or arbitration (Section 5(b)).
- The Union would give Respondent a list of grievances to be heard and a detailed basis for each grievance at least 14 days prior to each Step 1 meeting (Section 5(c)).
- If either party has to cancel a step 1 meeting, it will work in good faith to reschedule the meeting as soon as possible (Section 5(d)).

(GC Exh. 51.)

The parties agreed that any grievances filed after May 15, 2020, would be heard as follows:

- All grievances must be filed within 30 days of the alleged violation (Section 6(a)).
- Step 1: The Union presents grievances by department before a second-line supervisor or designee at 2-hour bi-monthly meetings. Respondent will provide written responses (Section 6(b)).
- Step 2: The Union presents grievances to the manager or designee at 2-hour bi-monthly meetings. Respondent will provide written responses (Section 6(c)).
- Step 3: Withdrawal or arbitration (Section 6(d)).
- The Union will give Respondent a list of grievances to be heard and a detailed basis for each grievance at least 14 days prior to step 1 and step 2 meetings. Grievances on these lists are considered heard at the close of step 1 and step 2 meetings (Section 6(e)).
- If either party has to cancel a step 1 or step 2 meeting, it will work in good faith to reschedule the meeting as soon as possible (Section 6(f)).
- If Respondent fails to hear a timely-presented grievance in either of the next two step 1 and step 2 meetings, the grievance is granted (Section 6(g)).

[9] Of the participants in negotiations, only Brooks, Ford, and C. Stanley testified at this hearing.

- If the Union fails to present a grievance at the next scheduled step 1 or step 2 meetings, the grievance is withdrawn with prejudice (Section 6(h)).
- The prior two provisions are to ensure that neither party blatantly disregards the intent of this side letter and does not apply to good faith mistakes or similar issues (Section 6(i)).

(GC Exh. 51.)

The grievance side agreement included a provision that article 15 of the Refinery CBA and the arbitration process in general would not be affected. Further, the parties agreed that upon execution of the grievance side agreement, the parties would withdraw, with prejudice, any existing legal claims concerning the grievance process.

At the hearing, the parties stipulated that this grievance side agreement applied to the Chem Plant and Lab bargaining units as of September 15, 2020 (Tr. 95, 143).

C. Stanley and Ford's Testimony

After the Union's request to address the grievance process during the MOA negotiations, C. Stanley drafted the grievance side agreement (Tr. 146, 758). Thereafter, C. Stanley, Ford, Lopez, and Brooks discussed the proposal in the hotel hallway for several hours (Tr. 1032, 1050). C. Stanley said to Brooks, "You are going to like this" (Tr. 1011). C. Stanley believed that the Union would like Respondent's proposal because the remainder of the MOA concerned items that would be economically disadvantageous for the Refinery bargaining unit employees as Respondent needed to cut costs for various business reasons (Tr. 1011).

C. Stanley proposed that if Respondent did not comply with the grievance terms in the side agreement, grievances would be granted (Tr. 1012). Section 6(g) of the side letter states: "If the Company fails to hear a timely-presented (6a and 6e) grievance in either of the next two Step 1 and Step 2 meetings, the grievance is withdrawn with prejudice" (GC Exh. 51). Further, based on Brooks' concerns of the ramifications of the Union making any mistakes which could result in a violation of the Union's duty of fair representation, C. Stanley included a provision that good-faith mistakes would not result in a grievance withdrawn with prejudice (Tr. 1014; GC Exh. 51).

C. Stanley proposed that the Union provide Respondent with a list of grievances to be heard and a detailed basis for each grievance at least 14 days prior to the step 1 and step 2 meetings. C. Stanley testified that Respondent proposed these changes to the grievance process because Respondent believed that the Union did not provide information on what the grievance concerned, which supervisors and managers should attend the grievance meeting, and which grievances would be covered at the grievance meeting (Tr. 758–759, 1010, 1015–1016). C. Stanley testified that Respondent, under the CBA grievance process, would not know which grievances the Union wanted to hear next, which caused Respondent to schedule grievance meetings and guess which supervisor or manager needed to attend (Tr. 1017). C. Stanley told Brooks that he hoped the new process would result in fewer grievances as the Union would need to perform their own due diligence before the potential grievance filing (Tr. 1017).

C. Stanley and Brooks discussed what "detailed basis" entailed. C. Stanley told Brooks that the Union needed to provide a list of grievances to be heard as well as a "narrative of what

the issue was" which are the "five Ws: the what, whens, whys" (Tr. 764–765). C. Stanley testified that he provided hypothetical examples during these discussions on why Respondent needed this information before the grievance meetings (Tr. 1032). Ford, who testified prior to C. Stanley about the grievance side agreement negotiations, testified that Respondent wanted details of the grievance to be known in advance so they could have a "fluent discussion" at the grievance meeting (Tr. 763). In response to Brooks' pushback that the Union already provided detailed information to Respondent, C. Stanley told Brooks, "'Those days are over. We are not going to go digging through files. We're not going to try to divine what you mean in one, two, three sentence grievance. We're not going to try to find out everyone who could have been involved. It's not possible. We need that from you. Who, what, why, when, where, how?' I said detailed narrative more times than I could count" which would entail paragraphs or pages of explanation (Tr. 1019–1022, 1033).

As for who would schedule the grievance meetings, C. Stanley and Ford admitted that the grievance side agreement is not clear who is responsible for this task, and those specifics were never discussed (Tr. 758, 1021).

With this grievance side agreement, upon execution, the parties would withdraw, with prejudice, any existing legal claims concerning the grievance process (GC Exh. 51). C. Stanley testified that the purpose of this provision of the grievance side agreement was to have a "fresh start" and "work together going forward" where problems arising from the grievance side agreement would be "old news" and not an issue (Tr. 1045, 1085–1088). C. Stanley testified that this provision, however, did not apply to any deferred grievances (Tr. 1088).

Brooks' Testimony

Brooks' testimony regarding the grievance side agreement negotiations is in stark contrast to Ford and C. Stanley's testimony. Significantly, during their case-in-chief, counsel for the General Counsel did not ask Brooks any questions about the negotiations for the grievance side agreement. This failure to question him on this subject is surprising considering the interpretation and implementation of the terms of this grievance side agreement are significant in this matter. Brooks only testified about these negotiation sessions when he was called on rebuttal.

Brooks testified that 30 to 35 sidebar discussions took place with three to five sidebar discussions regarding the grievance procedure (Tr. 1255). Regarding the meaning of providing a "detailed basis" of each grievance prior to the grievance meeting, Brooks testified that he only had a discussion with Ford and Lopez and asked if what the Union already provided when filing grievances was "ample," "[was] this detailed enough," and "what do we need to add" (Tr. 1256, 1262–1264, 1266–1267). Brooks testified that Ford and Lopez told him that the details the Union already provided were "ample" or "enough" (Tr. 1256, 1263–1265, 1270). Brooks also added that the information requests submitted to Respondent made it "even much more clear what the issue is" (Tr. 1256, 1264). Brooks could only recall Ford and Lopez' presence, and not C. Stanley's presence (Tr. 1256–1257, 1259–1260, 1262, 1269). Brooks testified that thereafter, the Union did not change the drafting of the grievances (Tr. 1267–1268). Brooks testified that he never asked Respondent's negotiators what the purpose of the phrase "detailed basis" (Tr.

1268). Brooks then contradicted his testimony when he recalled C. Stanley was present, who told him "You should really like this" and used the term "narratives" (Tr. 1260, 1270).

At the hearing, I posed a question to C. Stanley, who is in-house counsel, as to whether the parties had a "meeting of the minds" regarding the grievance side agreement. C. Stanley responded, "There's no doubt, zero doubt in my mind that [Brooks] left negotiations knowing what list and detailed basis was and what it required. I can't speak to what happened from there or why. No doubt in my mind he knew it" (Tr. 1032).

Credibility Analysis

I credit the testimony of C. Stanley and Ford as to what occurred during negotiations for the grievance side agreement; both C. Stanley and Ford testified consistently and with details. While counsel for the General Counsel objected to my allowance of both Ford and C. Stanley to remain present during the hearing despite a sequestration order (Tr. 81–84), I do not find their presence during one another's testimony tainted their credibility and authenticity. For reasons explained on the record, I ruled that both individuals could remain in the hearing room. Ford, who retired a few years prior, was essential for Respondent in that he was the most knowledgeable about his union interactions, and with whom counsel would need to confer during the hearing. Meanwhile, C. Stanley served as co-counsel in this matter and stated that he made the final litigation decisions. C. Stanley's testimony was limited to the grievance side agreement negotiations. Thus, based on this unique circumstance and statement by C. Stanley, I overruled counsel for the General Counsel and the Union's objection and permitted both individuals to remain in the hearing. Respondent proved that Ford's presence during the hearing was essential to its defense, and C. Stanley served as litigation decisionmaker. See *Greyhound Lines*, 319 NLRB 554 (1995); *Tasty Baking Co. v. NLRB*, 254 F.3d 114, 123 (D.C. Cir. 2001) ("the ALJ retains considerable discretion in determining which witnesses are 'essential' within the meaning of the rule").

The testimony of Ford and C. Stanley overlapped only on this critical subject: negotiation discussions for the grievance side agreement. Ford initially testified about the negotiations and provided information about C. Stanley's role and discussions with Brooks. Thereafter, C. Stanley testified and provided more details about these negotiations. But only after they both testified did Brooks, on rebuttal, testify about the grievance side agreement negotiations. Brooks also remained in the hearing, hearing Ford and C. Stanley's testimony as well. Ford and C. Stanley provided detailed testimony as to conversations held with Brooks on the purpose of the various provisions in the grievance side agreement. Even when questioned by me regarding a meeting of the minds on the side agreement, C. Stanley steadfastly insisted that he relayed the purpose behind the provisions to Brooks such that Brooks would know what the Union's requirements were to comply with the grievance side agreement: providing a detailed basis along with a list of grievances to be heard 14 days prior to the grievance meetings.

In contrast, Brooks testified to a wildly different version of events, and claimed that a "detailed basis" was never discussed by C. Stanley, and that only Ford and Lopez informed him that what the Union already provided when filing a grievance was sufficient. I find it improbable that C. Stanley, who drafted the grievance side agreement, did not share with Brooks the purpose of each provision as well as Respondent's expectations for the Union when filing

grievances. Indeed, a provision regarding the Union's duty of fair representation was added to the grievance side agreement to alleviate the Union's concerns if a mistake were made. C. Stanley specifically added for Respondent's benefit the provision of providing a list of grievances to be heard at the next meeting accompanied by a detailed basis for each grievance. It is nonsensical that Respondent would draft a grievance proposal with specific language and then inform the Union that what they had been doing when filing grievances under the CBA grievance procedure was sufficient. Why would the grievance process then be changed? Brooks' testimony is also undermined because he became defensive and vague with his responses on cross-examination when questioned about these negotiations. Brooks stammered at times when responding and became visibly annoyed with these questions. An account of events which are vague tends to often demonstrate uncertainty about what occurred. See *General Telephone Co. of Michigan*, 251 NLRB 737, 740 (1980) (an account which is vague tends, at the very least, to demonstrate uncertainty about what occurred).

Clearly, only Brooks or C. Stanley and Ford are testifying truthfully. Both versions of events cannot be true. Based on Brooks' demeanor, failure to be questioned on this issue until rebuttal, and inherent probabilities that Brooks was not forthcoming with complete responses and recollection, I cannot rely upon his version of events. Moreover, as discussed subsequently, when the issue of a detailed response arose with Respondent's representatives, Brooks, who is a prolific writer and quite verbose, never once responded and pushed back that Ford and Lopez told him during negotiations that the Union's response was "ample."

The 8(a)(5) and (1) Allegations

E. Implementation of the Grievance Side Agreement for Grievances Filed Between May 15, 2016, and May 15, 2020

Ford testified that approximately 100 grievances filed between May 15, 2016, and May 15, 2020, needed to be heard pursuant to the grievance side agreement (Tr. 766). In contrast, Brooks testified that approximately 600 grievances filed before May 15, 2020, were outstanding among the three bargaining units (Tr. 150–155).

Counsel for the General Counsel and the Union compiled a list of outstanding grievances since 2012, but Respondent disagreed with the accuracy of this list as some grievances could have been resolved in any manner. Further, the grievances which were moved to arbitration required the Union's Board of Stewards to agree to move forward with the arbitration before a panel of arbitrators could be requested; this list does not indicate these details (Tr. 722–723, 728, 930–931; GC Exh. 7; R. Exh. 1 (all grievances filed by the Union since 2012)). The parties stipulated that the grievances are filed sequentially, and thus any sequential gaps in the grievance numbers on this chart indicates that those missing grievances were either withdrawn, settled, or arbitrated (Tr. 951). Testimony revealed that some of these grievances had been withdrawn (Tr. 188). Approximately 425 grievances were filed by the Union between 2016 and May 15, 2020, and approximately 275 grievances were filed by the Union between May 15, 2020, and May 15, 2023 (GC Exh. 7). Regardless of the actual numbers, there is no dispute that a significant backlog of grievances existed.

Ford testified that when the Union moved for arbitration, he would be copied on the letter. However, the Union is responsible for initiating arbitration by requesting an arbitrator panel only after receiving internal union approval (Tr. 752, 960). Ford would wait to hear from C. Stanley once the arbitration panel was selected to then schedule the arbitration (Tr. 751; see GC Exh. 5). Not all matters would be arbitrated, and Respondent would not necessarily enforce the arbitration contract article which required the Union to schedule the arbitration within 12 months of filing the appeal at step 3 (Tr. 752, 754–755). C. Stanley testified that in 2012 the parties agreed to prioritize the arbitration of termination cases over contract interpretation arbitrations (Tr. 963).

After signing the MOA with the grievance side agreement, Brooks and Ford met in Ford's office to discuss implementation. Ford and Brooks decided to modify the terms of the grievance side agreement. On June 12, 2020, Ford sent an email to union administrative assistant Pam Ayala (Ayala) informing her that Brooks and he agreed that any grievance filed on or after July 1, 2020, not May 15, 2020 as set forth in the grievance side agreement, would follow the new process and asked Ayala to copy Ford on all grievances so Respondent could schedule them as the grievances were filed (GC Exh. 2; Tr. 765–766). Brooks testified that the Union then copied Ford on all filed grievances (Tr. 162).

In July 2020, Respondent trained its managers on the grievance side agreement (GC Exh. 53). This training material applied to managers and supervisors of all three bargaining units.[10] In these training slides, Respondent noted that historically there had been a large backlog of grievances at the Baytown facility in all three bargaining units. Ford wrote, "The parties settled on a modified grievance process that maintains all company rights, but also ensures the Company hears most grievances" (GC Exh. 53). Another slide in this training noted that 150 plus grievances filed between May 15, 2016, and May 15, 2020, needed to be heard during 3 full business days (GC Exh. 53). The training instructed supervisors and managers to not feel that they needed to respond to every issue, to not interrogate the grievant or steward, to not respond to a grievance during the meeting, to not allow discussion or requests on unrelated topics, to not allow union statements to anger the supervisor or manager, and to not commit to a course of action during the meeting (GC Exh. 53). Ford testified that supervisors and managers could commit to a course of action after the grievance meeting (Tr. 859). The supervisors and managers were instructed to be prepared, understand the issues, review responses with human resources to ensure alignment, ask clarifying questions, allow the Union to lead the meeting, limit the discussion to the specific grievance, and stay calm and focused and keep an open mind (GC Exh. 53). On cross-examination, Ford explained that these specific instructions to supervisors and managers were included because previously Brooks and the manager or supervisors' discussion would occasionally become contentious causing Ford to end the meeting (Tr. 858).

Ford testified that after the MOA was signed, he had trouble scheduling the grievance meetings with Brooks due to Brooks' vacation plans and return to work in the scale house (Tr.

[10] The parties stipulated that the grievance side agreement applied to the Chem Plant and Lab bargaining unit on September 15, 2020, but there must have been anticipation that this application would occur since managers and supervisors for these bargaining units were trained in July 2020 (GC Exh. 53).

749–750). To hear the grievances filed between May 15, 2016, and May 15, 2020, pursuant to the grievance side agreement, Ford testified that he told Brooks that they would have two video meetings in each of the areas of fuels north, fuels south, specialties, process services, and mechanical while the Chem Plant and Lab would hold combined meetings. The first meeting would be to discuss between themselves the background and details of the grievances, and the second meeting would be with the second-line supervisors and the department heads (Tr. 147–149, 767–768).[11] Brooks did not complain when Ford scheduled the grievance meetings in this manner rather than 3 full days of meetings per section 5(a) of the grievance side agreement (Tr. 769). The meetings were held in late September to late October 2020 (Tr. 768). This timing coincides with the Chem Plant and Lab bargaining units adopting this grievance side agreement on September 15, 2020.

Ford testified that during these meetings Respondent heard approximately 120 grievances, many of which were duplicative issues (Tr. 769, 854). In contrast, Brooks provided non-specific testimony as to how many grievances were heard (Tr. 156–157). Ultimately, the grievances were not resolved, and Ford admitted he did not provide written responses in accordance with step 5(a) of the grievance side agreement (Tr. 148, 1055–1056). Instead, Ford proposed to Brooks that he would send the Union a spreadsheet with the grievance information and Respondent's response, but Brooks refused the spreadsheet because he needed to be provided a response for each grievance (Tr. 770–771, 862). Ford testified that he made it clear verbally to Brooks that Respondent denied all the grievances (Tr. 771). In contrast, Brooks denied Ford ever telling him verbally that grievances were denied (Tr. 729–730). Brooks testified that he did not "take verbals" (Tr. 730).

Credibility Analysis

Here, I again credit Ford's testimony that he verbally told Brooks that the grievances filed between May 15, 2016, and May 15, 2020, were denied. I do not credit Brooks' testimony that Ford never provided him with a response. It was evident from the testimony of Brooks and Ford that they had a unique relationship which factored considerably in how they communicated. Although they communicated verbally multiple times daily, Brooks also provided lengthy emails and letters to Ford (although many letters were addressed to Lopez who was Ford's supervisor). It is clear from this record that Brooks preferred communication through written words. Ford, on the other hand, admitted he preferred to talk to Brooks via phone or in person (Tr. 868). Thus, here, where there is a dispute as to whether Respondent ever provided a verbal response to the grievances heard pursuant to section 5 of the grievance side agreement, I credit Ford's testimony. It seems more likely than not that if Ford had not responded, Brooks would have sent an email or letter, or both, to Ford asking for a response. It seems also unlikely that Brooks would abandon this issue of not receiving a response from Respondent. As will be seen subsequently, Brooks was not reluctant to let Respondent know when he believed Respondent was not following the grievance side agreement as the Union would send many grievance granted letters when the Union believed Respondent had not followed the time limits set forth in the grievance side agreement.

[11] The use of video meetings was commonplace during this time due to the COVID-19 pandemic.

F. Implementation of the Grievance Side Agreement for Grievances Filed After May 15, 2020

2020

While Ford and Brooks met about the grievances filed between May 15, 2016, and May 15, 2020, the Union continued filing grievances in the same manner and with the same quality of information as they filed when following the grievance procedure in the CBAs (Tr. 173, 622; see GC Exh. 5 (June 18, 2020, R20-44 grievance), R. Exh. 24 (December 20, 2021, R21-69 grievance) compare R. Exh. 30 (March 3, 2020, C20-01 grievance)). After a workplace concern arose, Brooks or other union officers would draft the grievance. The grievance included the name of the grievant, to what the grievant objects, the articles of the CBA impacted, the date and time of the violation, and the remedy desired (GC Exh. 5). For example, the grievance form could state "unjust discipline" along with what the grievant objects to such as unjust discipline, retaliation for filing harassment in the workplace charge, singling out, disparate treatment, and management creating a hostile work environment by retaliating/singling out employee for filing a harassment charge (GC Exh. 5). The Union numbered the grievance with a letter in front of the year to designate in which location the bargaining unit employees worked such as "R" for Refinery and "20" for 2020 (Tr. 175).

Thereafter, Ayala would then email the grievance form to Respondent and periodically send a list of pending grievances to Respondent (Tr. 164, 174). The Union asked for the grievance meeting to be arranged by Respondent at the earliest convenience, asked who would represent Respondent, and asked which individuals should attend the grievance meeting. Along with the grievance, the Union generally filed an information request with a due date 2 weeks later (GC Exh. 5). Brooks testified that the information requests he submitted to Respondent provided further information and details to augment the grievances (Tr. 623–624).

Ford testified that after meeting with Brooks about grievances filed between May 15, 2016, to May 15, 2020, Ford asked Brooks about the requirement per section 6(e) of the grievance side agreement of providing a detailed basis for the grievances filed (Tr. 772). In response, Brooks denied being required to give Respondent a detailed basis for the grievance and said that the detailed basis was not part of the grievance side agreement (Tr. 772–773). Ford disagreed with Brooks, but Ford never sent Brooks an email or letter requiring the Union to provide a detailed basis for the grievances or even informing the Union that Respondent believed the information provided on the grievance form did not comply with the terms of the grievance side agreement (Tr. 772, 866). Ford testified that he likely informed Brooks verbally that the Union needed to provide a detailed basis for the grievance as Ford and Brooks spoke daily (Tr. 866–867, 931–932). Brooks testified that Ford did not tell him that Respondent believed that the Union was not providing a detailed basis for the grievance (Tr. 655).

On September 23, 2020, Ayala sent Ford a list of 6 grievances filed between June 18, 2020, and August 5, 2020, that had not been heard since May 15, 2020. Ayala wrote that those six grievances should be granted based on section 6(g) of the grievance side agreement. The list only included the grievance number, grievant name, issue such as unjust discipline, and date filed. Ayala noted that Respondent had not set up any 2-hour bimonthly meetings per department. Ayala wrote, "Per the new contract, effective May 15, 2020, grievances that are not

heard by the company within the 30 days will be granted to the Union. All of these grievances were sent within the 30-day window and within the 14-day window as outlined in the CBA. To my knowledge the Company has not set up any 2-hour bimonthly meetings per department" (R. Exh. 38). Ayala's comments do not reflect Brooks and Ford's agreement to move the start date of the newly filed grievances to July 1, 2020. One of these outstanding grievances included unjust discipline concerning R. Williams (R20-44) which the Union had already moved to arbitration on August 5, 2020 (GC Exh. 5).

Ford responded that he would schedule the grievances for the following week (R. Exh. 38). It appears the parties held grievance meetings on October 2, 2020, and October 30, 2020 (R. Exh. 37; GC Exh. 5). At least for grievances filed on October 23, 2020, Respondent issued a written grievance response on November 17, 2020 (R20-72, C20-38, C20-39) (GC Exh. 5). Other times, Ford testified that he would verbally discuss Respondent's grievance position with Brooks after the grievance meeting occurred (Tr. 859–860).

On October 7, 2020, Ford sent a meeting invite to the Union to schedule recurring monthly one-hour meetings for each department, beginning in October 2020 through 2022 (Tr. 787–788, 904; R. Exh. 36). No notes were taken during these meetings (Tr. 929–930, 1000). Ford testified that the Union did not take any proactive steps to schedule the grievance meetings, did not provide a detailed basis for the grievances other than the grievance form, and did not send a list of grievances to be heard at the next scheduled grievance meeting (Tr. 771–773, 779–782, 784). In contrast, Brooks testified that the parties held no regularly scheduled grievance meetings pursuant to the grievance side agreement, and grievance meetings were held sporadically (Tr. 157–158, 171). Brooks' testimony is clearly exaggerated as the documentary evidence shows that these grievance meetings were scheduled and held (R. Exh. 36).

Ford explained that prior to the grievance side agreement, Respondent would select the grievances to be heard and send out the information for the meeting. With the grievance side agreement, Ford did not schedule specific grievance meetings but instead sent out placeholder meeting requests for each bargaining unit (Tr. 775, 781). Ford testified that approximately 6 grievances could be heard in one hour-long meeting (Tr. 784). Ford also scheduled meetings to follow up on questions regarding grievances (R. Exh. 36). Despite these recurring scheduled grievance meetings, Brooks could not attend some grievance meetings, and sometimes Ford and Brooks would not discuss grievances during the scheduled grievance meeting (Tr. 771–772, 775, 929, 934–935). The Union never complained to Respondent that the meetings scheduled were 1 hour rather than 2 hours in length.

On December 1, 2020, Ayala sent Ford an email asking him which grievances would be heard for the next scheduled grievance meeting (R. Exh. 37). Ford responded, asking Ayala to send him a list of the grievances that the Union wanted to hear at that meeting (Tr. 783, 785–786). Ayala sent the entire list of grievances filed by the Union to Ford and asked, "Let me know which ones you want to do tomorrow." Ford testified that Ayala's actions of sending in the entire list of outstanding grievances was a continuation of the prior method the parties used to hear grievances under the CBAs, and did not correspond with the instructions in the grievance side agreement (Tr. 779, 786).

Ayala also reminded Ford on December 1, 2020, that she had not received responses from the grievances heard on October 2, 2020 (R. Exh. 37). On December 8, 2020, the Union began sending out "grievance granted" letters because the Union took the position that pursuant to section 6(g) of the grievance side agreement Respondent failed to timely hear a grievance (GC Exh. 5 (R20-44)). The Union appears to have taken the position that if a grievance was not heard within 30 days of filing the grievance, then the Union would move the grievance to the next step of the grievance process, and then if still not heard, invoke arbitration. After some time, then the Union would issue a grievance granted letter if the Union believed Respondent had not heard the grievance timely (GC Exh. 5 (R20-44)).

For example, on June 18, 2020, the Union filed a grievance on behalf of R. Williams (R20-44) for unjust discipline, and asked Respondent to schedule the first step grievance meeting at its earliest convenience. On July 13, 2020, the Union then appealed the grievance to the final step of the grievance process, and asked Respondent to let the Union know when the meeting would be held. On August 5, 2020, the Union then moved the grievance to arbitration pending approval from the stewards, and if approved, would contact Respondent to request a panel of arbitrators. However, on September 23, 2020, Ayala sent Ford an email including this grievance as not having been heard since being filed after May 15, 2020. Ford then responded that he would schedule the grievance to be heard along with others the following week. Grievance meetings were held the following week but there is no documentation as to which ones were heard and on what days. Finally, the Union issued a grievance granted letter on December 8, 2020, and asked for the discipline to be removed from R. Williams personnel files (GC Exh. 5 (R20-22)). Presumably, Respondent did not respond to any of these correspondences or to the grievance granted letters (Tr. 179, 1061–1062). However, R20-22 is not included on the list of grievances at GC Exh. 7.

Respondent disagreed with the Union not providing a list of grievances to be heard and a detailed basis for each grievance at least 14 days prior to the step 1 and 2 meeting (sec. 6(e)), but Respondent never asserted that the grievance would be withdrawn with prejudice pursuant to section 6(h). Ford testified that because he had known Brooks for a long time, he believed that Brooks would relent after some time and comply with the grievance side agreement (Tr. 789–790). In addition to the disagreement about whether the Union needed to provide a list of grievances and the detailed basis for the grievances, the Union would not meet with Respondent to discuss a grievance if Respondent had not responded to the related information request. Furthermore, the Union would declare a grievance granted if the information was not received within 14 days (Tr. 790).

Thus, although the testimony from Ford is vague as to when he spoke to Brooks about the deficiency the Union had in following the grievance side agreement, I decline to credit Brooks' testimony that the issue of providing a detailed basis for grievances did not arise. It appears even during this short duration since the signing of the grievance side agreement, the parties had different interpretations of how to follow and implement the procedure. This differing interpretation is evident by the grievance filed on behalf of R. Williams, and the course of confusion which occurred after its filing.

2021

On March 18, 2021, Lopez sent Ford an email stating that he wanted to discuss the situations where Brooks claims he "won" a grievance because Respondent had not heard the grievance. Lopez expressed discomfort with sending many grievances to arbitration. Lopez wrote, "Either way, in concept I feel we are moving away from the work we did during 2020 USW bargaining to create a more fair/equitable grievance process where both parties are held accountable, and grievances are heard timely. Further, to an outside party or even BL Mgmt, I wonder if it will appear we are not following our own, recently negotiated, process" (GC Exh. 54). No written response to this email is in the record.

Ford retired in October 2021, and Fields replaced Ford. The monthly grievance meetings per area Ford had scheduled migrated to Fields' calendar, and Fields began to include the grievances which would be discussed at those grievance meetings (Tr. 165, 168, 775–779, 1136–1137; R. Exh. 36). Additional meetings were scheduled as needed such as for terminations (Tr. 1137). The Union never asked Fields to schedule more grievance meetings and did not attempt to schedule meetings themselves (Tr. 1138). The Union continued to send their list of outstanding grievances to Fields but would not submit a list of grievances with details to be heard at the next grievance meeting (Tr. 1142, 1147–1148; R. Exh. 31).

When Fields asked Brooks about the detailed basis for upcoming grievances to be heard. Brooks told Fields that the grievance details were on the grievance form (Tr. 1142). Fields testified that he told Brooks on several occasions that the Union needed to provide details (Tr. 179–180, 1177). For example, Fields asked for additional details, asking specific questions, regarding "unsafe working conditions" (R. Exh. 29). Brooks replied that the grievance is "clear" and repeated what he had written in the grievance (Tr. 605–610; GC Exh. 6; R. Exh. 29). Further, Brooks would only provide verbal details to Fields for approximately 10 grievances where Brooks was the grievant (Tr. 1143, 1177). Brooks never told Fields that the information requests provided the details for the grievance (Tr. 1144). Herein reveals another reason why Brooks' testimony is not credible. Brooks testified that during the side agreement negotiations, Ford and Lopez told Brooks that the information the Union already had been including on the grievance forms was "ample" and sufficient. If this conversation had occurred, Brooks would have informed Fields in writing and verbally that he had been told that the information the Union provided was the detailed basis Respondent sought. Brooks never responded in such a way to Fields or anyone else from Respondent. Thus, I again cannot credit Brooks' testimony.

Fields testified that the Union took the position that if the grievance was not heard within 14 days of filing, the grievance would be granted even when information request responses were pending from Respondent (Tr. 1148–1150). Ford testified similarly.

On October 18, 2021, Fields sent an email to Lopez and Naquin listing the non-discipline grievances he wanted to cover relating to the Chem Plant. Fields queried what should occur with the gift card grievances since the program awarding gift cards ended. Naquin responded that if an unfair labor practice (ULP) had been also filed, then Respondent should pause hearing the grievance to allow the ULP process to proceed (Tr. 1180, 1182, 1218–1219; GC Exh. 58).

On December 8, 2021, Brooks sent an email to Fields regarding outstanding/ongoing issues. Brooks writes, "As will always be a topic until it is somehow resolved is that of **grievance meetings**. The Company is to schedule meetings for these meetings and very little to no meetings are being scheduled. The Union is following the procedure and moving the grievances forward through the steps and in many cases is sending the company letters that the matter should be sustained given the Company did not hear the grievances and or did not respond in writing if a grievance was heard in the rare occasion that they are heard" (GC Exh. 67 (emphasis in original)). Usually after time passed with a grievance not being heard, the Union would send a letter to Respondent claiming that due to lack of timely hearing by Respondent, the grievance is granted (GC Exh. 5). Fields, who forwarded Brooks' email to Naquin and Lopez, commented to Brooks' email complaints stating, "We have had 12 grievance meetings to date, however due to the large number of grievances filed along will [sic] robust information request, it's more difficult to schedule the meetings within the timeframe agreed upon (14 days)" (GC Exh. 67). Fields testified that this number of grievance meetings reflected the time since he had become the labor advisor, and that the time frame of 14 days to respond to information requests came from Brooks (Tr. 1249–1250). Fields testified that he had responded to all information requests he received since October 2021 (Tr. 1250).

2022

On February 28, 2022, Ayala sent Fields a list of grievances after she "noticed" on the calendar that he had scheduled mechanical grievances. Fields then asked the responsive supervisor and managers if they could hear the grievances and reminded them that during the grievance they should only listen to the Union and ask clarifying questions but to not respond to the grievance at the meeting (GC Exh. 61).

On March 17, 2022, Brooks reiterated that grievances could not be presented until all information requested had been received, and that before Respondent schedules a grievance meeting, Respondent needs to ensure that all information requested is given to the Union (R. Exh. 31). When Fields asked which grievances the Union wanted to present at the next grievance meeting as Respondent wanted to "try and move forward with as many as we can," Brooks said the Union "wanted them all heard" (R. Exh. 31). Fields responded, questioning whether Brooks also wanted the grievances with outstanding information requests to be heard. Brooks replied that he did not understand the problems with responding to the information requests, that the Union had a duty of fair representation and would not present grievances without the information requested, and "per the agreement is to schedule the grievance meetings needs to assure that before it schedules a meeting it has provided the information requested and has given ample time for the Union to review if all the information requested has been submitted to the Union as the Company has been piece milling this action and reasonable time for the Union to digest the information prior to scheduling the grievance meeting" (Tr. 1146–1147; R. Exh. 31). Fields testified that Respondent could not respond to the Union's information requests within 14 days as Brooks claimed as many of these requests were extensive (Tr. 1147).

On April 26, 2022, Brooks sent Fields an email listing all "open" issues. Among the issues listed include outstanding information requests and grievance "hearings" not occurring. Fields wrote to the new Baytown facility Human Resources Manager Erik VanDuivendyk (VanDuivendyk), who replaced Lopez who had retired, that many of the grievances have

outstanding information requests and ULPs filed, and Fields was trying to schedule the grievances without outstanding information requests. Fields complained that the business lines were slow to respond, if at all, to the information requests. VanDuivendyk responded that he understood that Brooks would not hear grievances until he was satisfied with the information requests (GC Exh. 60).

On May 11, 2022, Fields and Ayala corresponded back and forth regarding which grievances the Union wanted heard at the next meeting. Ayala sent a list of all unheard Chem Plant and Lab grievances not heard at the first step, final step or at all since 2019 (R. Exh. 33). Ayala responded that she did not know which grievances could be heard since she did not know the supervisors' schedules (R. Exh. 33). Fields then asked Ayala which grievances the Union wanted to present, and Fields would get the meetings scheduled or add placeholders to the supervisors' calendars (R. Exh. 33; Tr. 1151–1152).

On May 13, 2022, Fields sent a message to Respondent's managers regarding tasks he sought to complete including information request responses, and schedule, respond, and resolve grievances with 22 grievances closed thus far. In response to Field's message, managers suggested that Fields prioritize scheduling, hearing and settling/resolving grievances over responding to Brooks' information requests which "severely impended ability to get grievances heard" (GC Exh. 62).

On May 17, 2022, in advance of the monthly grievance meeting for the Chem Plant and Lab, Ayala asked Fields which grievances she needed to "pull" for the meeting (GC Exh. 3). Fields responded again asking which grievances the Union wanted to present, and Ayala stated that the Union wanted to have all 50 to 60 grievances on the list she had previously submitted heard. Fields responded that they did not have time to hear them all, and thus, he needed a list of the grievances the Union wanted to present to have the appropriate managers present. Furthermore, Fields stated that he needed the Union to send the grievances they wanted to present so those could be heard timely and efficiently, with the grievance side agreement being followed. Fields stated, "[t]he robust information request for a lot of these grievances require time from multiple people, so some of those may not be able to be heard in that 14-day period," and when that occurs, he would let the Union know in writing that Respondent needed more time. Brooks responded accusing Respondent of not following the grievance side agreement, and that the Union had submitted a list of grievances to be heard and a detailed basis for each grievance at least 14 days prior to step 1 and 2 meetings (GC Exh. 3).

On May 20, 2022, Fields sent a list of grievances from the Chem Plant and Lab, dated from 2021 to 2022, to be heard potentially the following week. Ayala responded that three grievances still needed information provided and thus the Union could only present the other grievances on this list (R. Exh. 62).

On May 25, 2022, the Union sent two letters to Respondent arguing that per the grievance side agreement, the grievance time had elapsed, and the grievances should be granted (GC Exh. 63). The Union argued that Respondent did not abide by the time frames, and that the Union had not granted any extensions of time. Fields forwarded Brooks' letters to VanDuivendyk and Mike Baumgarten (Baumgarten), who was the Refinery human resources manager. Fields wrote, "There is no point listening to any grievances over 14 days old or

without an agreed upon extensions [sic], unless we are agreeing with the grievance" (GC Exh. 63). Fields testified he was referring to the specific grievances mentioned in that email: extractions and daylight savings time (Tr. 1213).

On August 18, 2022, Fields sent an email to the Union complaining that Brooks had not been available for the past two weeks, and that scheduling the next steps in the grievances could not occur. Fields wrote that he had been requesting extensions which were denied by the Union, and that another Union steward should be available to present the grievances. Furthermore, Fields notes that certain grievances had been remedied with the employees receiving their pay increases. Finally, Fields asked for clarification on one grievance (Tr. 1162–1163; R. Exh. 63). Thereafter, the Union sent a grievance granted letter as the grievances had not been heard within 14 days and did not grant the Union's request for extension (Tr. 1163–1164). Most of these grievances listed were not heard at step 2, but a Refinery grievance had been heard through steps 1 and 2 and arbitration requested (R22-28) (GC Exh. 7). Furthermore, the grievances where Fields noted that the employees received pay raises accordingly are still on the list of grievances maintained by the Union as unresolved where also the Union requested arbitration on August 17, 2022, the day before Fields sent his email noting that he had not been able to schedule a meeting with the Union (R22-27, C22-28, C22-29) (GC Exh. 7).

On September 16, 2022, Fields sent VanDuivendyk the terms of the grievance side agreement. Fields wrote, "Due to the large info request, this process can't be followed to its entirety" (GC Exh. 64). Fields testified, "These overburdensome info requests was delaying a lot of the grievances, pushing them out for weeks or months because it took a lot of time to get some of this information, a lot of this information" (Tr. 1195, 1214–1216).

On September 30, 2022, Fields sent an email to the Union requesting the number of grievance meetings the Union had with Ford in 2019, 2020, and the first 6 months of 2021. Fields wanted to get as many grievances heard "as possible" (GC Exh. 65). Fields testified that he sought this information as he only had data for 2022, and wanted to know how many grievances were heard per year and the cost and time associated (Tr. 1198-1199). On October 10, 2022, Ayala responded that as best as she could determine in 2019 there were 10 grievances heard, in 2020 there were 109 grievances heard, and in 2021 there were 19 grievances heard (GC Exh. 65).

On October 10, 2022, Brooks did not attend a grievance meeting which had been accepted on his behalf by the Union; Brooks had been at a safety meeting. Fields sent Brooks an email about his failure to attend the grievance meeting and said he would reschedule the meeting. Brooks responded that Fields and Respondent knew he attended the regularly scheduled safety meetings, and that there were being "disingenuous" (R. Exh. 64). Fields responded that he did not know when these safety meetings are scheduled and only relies on what the Union accepts on Brooks' behalf. Ayala responded that she thought Fields would cancel the grievance meeting as he could see the safety meeting on Brooks' calendar (R. Exh. 64). Although the Union did not attend the meeting and present the grievances, Respondent did not deem the grievances withdrawn per the agreement (Tr. 1170). Fields testified that Respondent wanted to keep a working relationship with Brooks (Tr. 1170).

The backlog of grievances to be heard and the Union's grievance granted letters prompted a meeting between the Union and Respondent (Tr. 1158–1159). Prior to this meeting, Fields had spoken to Brooks 5 to 6 times about problems with the grievance process (Tr. 1159). On October 13, 2022, Brooks, Fields, and VanDuivendyk attended a grievance meeting via video call (Tr. 169–170). According to Fields, VanDuivendyk expressed Respondent's position that the Union was not complying with the grievance side agreement (Tr. 1160). At the end of the meeting, VanDuivendyk discussed the grievance process going forward where Respondent intended to schedule grievances every two weeks (Tr. 170–171). VanDuivendyk stated that if there were any outstanding information requests, the grievances would still be scheduled and that if Brooks could not attend, another representative needed to be present for the Union (Tr. 170–171, 399). Brooks responded that Respondent could not tell the Union how to perform its duties (Tr. 399).

After this meeting, Brooks sent an email to Fields and others to document the conversation (R. Exh. 34). Fields responded to Brooks' email, disagreeing with his summary. Fields noted that after Brooks asserted that grievances are granted that are not heard within 2-weeks of the filing, VanDuivendyk responded that Respondent could not hear the grievances within 2 weeks when the Union also submitted information requests. Despite Brooks generally offering extensions of time for the hearing of grievances, Fields noted that the Union had denied the requests for extensions of time. Fields wrote, "The Company feels it is important to hear all grievance[s] brought forth by the USW. Per the side agreement, included and outlined below, Number 5.e the Union is responsible for telling the Company which grievances they would like to hear (and are ready to present) 2-weeks prior to the grievance meeting. The USW has not been telling the Company which grievances they would like to hear and as such, the Company has been working to schedule grievance meetings anyway, because again, we feel that it is important to hear grievances" (GC Exh. 4). Fields denied Brooks' claim that VanDuivendyk said that Respondent would not release Brooks to present the grievance, but that the volume of these grievances combined with the 2-week time period may necessitate the Union to designate another person to present the grievance.

Brooks responded that the parties would "agree to disagree." Brooks stated that the Union does not schedule grievances, and only "periodically" sends Respondent a list of active grievances that have not been heard or scheduled. Brooks denied not complying with the side agreement at section 6(e).[12] Brooks argued that the Union would not grant extensions of time after the deadlines had passed. Brooks wrote that for decades the Union and Respondent "operated with the 10-day information request timelines and the 15-day grievance hearing timelines for decades" which allows the Union 5 days to review the information before the grievance is heard. Furthermore, Brooks wrote that "if information requested is not provided that the Union will take the necessary legal actions to get the information and will also consider such as refusal to provide and or unreasonably delaying requesting information as well as bad faith bargaining." Finally, Brooks insisted that he would present all grievances as he had since May 2010 (R. Exh. 34).

Fields testified that between October 2021 and May 2023, the Union filed approximately 200 to 300 grievances of which approximately 60 to 70 grievance meetings were held and

[12] Brooks wrote 5e but as there is no 5e, Brooks meant to refer to 6(e).

approximately 20 grievances were settled (Tr. 1139, 1143, 1207). The Union rarely withdrew grievances except when discipline expired (Tr. 753–754). Fields explained that grievances were never settled during grievance meetings because the appropriate manager needed to hear the grievance and discuss with labor relations after the meeting how to proceed with the grievance (Tr. 1139–1140).

C. Stanley did not learn about the problems with the implementation of the grievance side agreement until after the Union filed an unfair labor practice charge in February 2021. Ford told C. Stanley that Brooks never provided a list of grievances along with a detailed basis for the grievances (Tr. 1027). Furthermore, Brooks never called C. Stanley to discuss the problems (Tr. 1027–1029). C. Stanley testified that he was not surprised that neither Ford nor Brooks let him know about these disagreements as the two had a unique relationship and seemed to work things out between themselves (Tr. 1026). However, C. Stanley also did not act upon this information to ensure that the parties had a common understanding of how to implement the grievance side agreement.

Legal Analysis

At complaint paragraph. 17, the General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by repudiating the May and September 2020 grievance side agreement. The General Counsel alleges that Respondent failed to provide any response to the 120 outstanding grievances filed between May 15, 2016, and May 15, 2020, despite meetings in July and August 2020. Furthermore, the General Counsel alleges that despite 65 grievances being filed since the grievance side agreement went into effect, Respondent only heard three of those grievances at step 1 in October 2020. Otherwise, the General Counsel alleges Respondent has stopped meeting or responding to grievances, failed to respond to grievance granted letters filed by the Union, and has not sent any grievance granted letters to the Union or granted the requested relief for any of those grievances. The General Counsel alleges that as of July 30, 2021, there were over 700 outstanding grievances that had not been resolved or heard at all, including about 400 grievances pending at the arbitration stage.

Resolution of grievances is regulated by Section 8(d) of the Act and requires both parties to operate in good faith. Grievance procedures are mandatory bargaining subjects that may not be unilaterally modified or repudiated by an employer. *Bethlehem Steel Co.*, 136 NLRB 1500, 1502–1503 (1962), enfd. in relevant part sub nom. *Shipbuilders v. NLRB*, 320 F.2d 615 (3d Cir. 1963). Further, an employer is obligated to meet with the employees' bargaining representative to discuss grievances with an honest effort to resolve the grievances. *Hoffman Air & Filtration Systems*, 316 NLRB 353, 356 (1995). And a pattern of conduct intended to frustrate the operation of the grievance procedure violates the grievance obligation. Id. at 357; see also *Contract Carriers Corp.*, 339 NLRB 851, 852 (2003); *Trailmobile Trailer, LLC*, 343 NLRB 95, 97 (2004) (employer unilaterally abrogated the grievance process by refusal to attend second-step grievance meeting within 5 days of the rejection of the first step response and prematurely ended the only second-step grievance meeting held); *Postal Service*, 309 NLRB 13 (1992) (Board issued extraordinary remedy to address grievance-arbitration proceedings logjammed by the employer); and *Exxon Chemical Co.*, 340 NLRB 357 (2003) (employer violated the Act by refusal to designate an arbitrator and participate in arbitrations pursuant to procedures set forth in collective-bargaining agreement at the end of the bargaining relationship between the parties).

An employer's breach of contract may be so clear and flagrant as to amount to a unilateral modification of the collective-bargaining agreement and a renunciation of the bargain reached during negotiations thereby violating Section 8(a)(5) and (1) of the Act. *Paramount Potato Chip Co.*, 252 NLRB 794, 797 (1980). The Board has held that an employer's refusal to process or arbitrate contractual grievances violates Section 8(a)(5) and (1) of the Act if the conduct amounts to a unilateral modification or wholesale repudiation of the agreement. *Velan Valve Corp.*, 316 NLRB 1273, 1274 (1995), citing *Southwestern Electric*, 274 NLRB 922, 926 (1985) (the relevant inquiry is whether the employer, by its refusal to arbitrate, has thereby unilaterally modified the terms and conditions of employment during the contract term). The refusal to process or arbitrate all or a particular class of grievances, as opposed to a single grievance or narrow class of grievances, amounts to a wholesale repudiation of the agreement. Id. See also *ACS, LLC*, 345 NLRB 1080, 1081 (2005); *Indiana & Michigan Electric Co.*, 284 NLRB 53 (1987).

Section 10(b) Defense

As an initial matter, Respondent argues that any grievances filed prior to May 15, 2020, are time-barred (R. Br. at 34–36).[13] Respondent supports its argument by citing to the charge description in case 16–CA–272155, filed on February 2, 2021. In that charge, the Union alleged that since about December 7, 2020, and continuing, Respondent has violated the Act by repudiating the contractual grievance procedure, which provides that any grievance not heard at one of the next two scheduled step 1 or step 2 meetings is granted by default (default provision) (GC Exh. 1(o)). Such a default provision only pertains to grievances filed after May 15, 2020, Respondent argues, and is not applicable to the portion of the grievance side agreement concerning grievances filed between May 15, 2016, and May 15, 2020.

It is well settled that an untimely complaint allegation is not precluded by Section 10(b) if the pertinent conduct occurred within 6 months of a timely filed unfair labor practice charge and is "closely related" to the timely filed charge's allegations. See *Alternative Energy Applications, Inc.*, 361 NLRB 1203 (2014). The test for determining whether the otherwise untimely allegation is closely related to the timely charge is set forth in *Redd-I, Inc.*, 290 NLRB 1115 (1988). The Board considers (1) whether the otherwise untimely allegation is of the same class as that of the timely filed charge, i.e., whether the allegations involve the same legal theory and usually the same Section of the Act; (2) whether the otherwise untimely allegation arises from the same factual situation or sequence of events as the allegation in the timely charge, i.e., whether the allegations involve the same conduct, usually during the same time period, and with a similar object; and (3) whether a respondent would raise the same or similar defenses to both allegations. Id. at 1118.

[13] During this proceeding, on September 5, 2023, Respondent filed a motion in limine to preclude evidence regarding the processing of grievances prior to May 15, 2020, and after May 15, 2023 (GC Exh. 1(cccc)). Counsel for the General Counsel filed an opposition on September 7, 2023 (GC Exh. 1(dddd)). This issue also was discussed extensively on the record, and herein is the decision as to which portions of the complaint allegations are time barred (Tr. 115–120).

Applying these factors, I find that grievances filed between May 15, 2016, and May 15, 2020, are closely related to the timely filed charge alleging a repudiation of the grievance side agreement concerning grievances filed after May 15, 2020. As to the first factor, both grievance periods concern the same general legal issue as to whether Respondent repudiated the grievance side agreement, dated May 15, 2020 (and subsequent September 15, 2020). The second factor also weighs in favor of consideration of the grievances filed between May 15, 2016, to May 15, 2020. The grievance side agreement arose because the parties recognized that there had been a significant backlog in grievance processing. The parties agreed to reach back to May 15, 2016, the start date of the prior CBAs terms, to address that backlog of grievances. For the final factor, Respondent's defense would remain the same. Although the default provision only applies to grievances filed after May 15, 2020, the grievances filed between May 15, 2016, and May 15, 2020, are also included in this grievance side agreement and closely related to the timely filed charge. Thus, the grievances filed between May 15, 2016, and May 15, 2020, will be considered in this decision. In other words, this decision will also consider whether Respondent repudiated Section 5 of the grievance side agreement.

I disagree with counsel for the General Counsel's argument at the hearing that grievances to be addressed as part of the allegation of repudiation of the grievance side agreement reach back to 2012. The grievance side agreement arose because of the significant backlog of grievances but the parties did not include any resolution for the unresolved 2012 to May 14, 2016, grievances. Those grievances are not closely related as their provisions were governed by the grievance procedures in the CBAs, not the May 15, 2020, grievance side agreement. This backlog certainly is background evidence about why the parties decided to negotiate and agree to another grievance procedure, but it is not like or related and cannot lead to a remedy, if the repudiation were to be proven.

Repudiation Allegation

Now, to address the complaint allegation that Respondent repudiated the grievance side agreement, counsel for the General Counsel argues that the Union met its obligation under the grievance side agreement by providing the list of grievances the Union wanted heard at the next grievance meeting and by providing the grievances to Respondent. Counsel for the General Counsel alleges that Respondent never told the Union that the information and lists provided were not complying with the grievance side agreement. Further, Respondent never asserted the terms of the grievance side agreement by stating that the grievance was withdrawn because the Union had not complied with the terms. Counsel for the General Counsel also argues that Respondent did not follow the grievance side agreement by not scheduling 3 full business days to address grievances filed between May 15, 2016, and May 15, 2020, failing to provide written responses to the grievances, and did not schedule 2-hour bi–monthly meetings. Even in the alternative, pursuant to *Bath Iron Works Corp.*, 345 NLRB 499 (2005) (where an employer has a "sound arguable basis" for its interpretation of a contract, and is not motivated by union animus or acting in bad faith (citations omitted)), counsel for the General Counsel argues that Respondent did not have a sound arguable basis to take a position that the Union did not give a

list of grievances to be heard along with a detailed basis as the Union did provide the required information (GC Br. at 26–33).[14] The Union argues similarly (CP Br. at 17–23).

Respondent argues that contrary to counsel for the General Counsel's arguments, Respondent did not abandon the grievance process. Respondent scheduled monthly meetings, corresponded with the Union about various grievances, and continued to process grievances despite their own view that the Union was not complying with the grievance side agreement. Respondent argues that the Union did not provide the list of grievances to be heard and the detailed basis for the grievances at least 14 days prior to the scheduled step 1 and step 2 meeting. Thus, Respondent was not obligated to hold the corresponding step 1 and step 2 grievance meetings. See *Solution One Industries, Inc.*, 372 NLRB No. 141, slip op. at 1 (2023) (Board affirmed the ALJ's decision that the General Counsel failed to prove that the Union's conduct obligated Respondent to answer the grievance within the timeframe allotted). Respondent further complains that the Union engaged in dilatory tactics and bad faith by not filing class actions grievances, filing many grievances along with extensive information requests, and moving grievances to the arbitration stage but rarely requesting to arbitrate those grievances. Finally, Respondent argues in the alternative following the Board's rationale in *Bath Iron Works* that the Company had a sound arguable basis for its interpretation of the grievance side agreement whereby Respondent was not required to hear a grievance unless the Union provided a list of grievances to be heard at the next grievance meeting along with a detailed basis (R. Br. at 36–51).

Given these facts, parties' arguments, and Board law, the General Counsel failed to prove that Respondent repudiated the grievance side agreement. Both sides did not follow the terms of the grievance side agreement and appeared to implement their own interpretations and terms of the grievance side agreement. Here, there is no evidence that Respondent's conduct when implementing the grievance side agreement sought to frustrate the process thereby abrogating the agreement. A recitation of the long history as set forth above between the parties on the implementation of the grievance side agreement illustrates this fact. Both parties contributed to the maelstrom, and with such conduct, Respondent did not repudiate the grievance side agreement. Respondent never refused to hear any grievances and did not act in bad faith.

To begin, immediately, Brooks and Ford decided to amend the terms of the grievance side agreement at section 6 to address grievances filed after July 1, 2020, rather than May 15, 2020. Despite this agreement, the Union claimed that certain grievances had not been heard and issued grievance granted letters as soon as August 2020. The Union throughout the term of the grievance side agreement took the position that grievances would be granted if the grievances were not *heard* within 30 days of filing. This timeframe is not specified in the grievance side

[14] Counsel for the General Counsel requests the Board to overturn the decision in *Bath Iron Works* and return to the clear and unmistakable waiver standard. To be clear, the position of the ALJ is to follow current Board law. ALJs do not make or alter existing law or policy—this role lays solely with the Board. See, e.g., *Western Cab Co.*, 365 NLRB 761, 761 fn. 4 (2017), citing *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984); *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004).

agreement—the grievance side agreement only states that grievances must be *filed* within 30 days of the alleged violation.

Further, despite both Ford and Fields' requests, the Union never informed Respondent which grievances they wanted heard at the next scheduled meeting per sections 5(c) and 6(e) so Respondent could ensure the appropriate managers and supervisors were present. The Union consistently stated that they wanted all outstanding grievances to be heard rather than which grievances would be heard at the next meeting. The Union never provided a detailed basis for these grievances other than the grievance form—again despite Ford and Fields requesting this information. Brooks essentially claimed that the grievance side agreement did not change any obligation on the part of the Union. This claim cannot be true. As credited, C. Stanley informed Brooks that along with Respondent, the Union needed to change its approach to processing grievances so the parties could jointly reduce the grievance backlog. The purpose of this grievance side agreement was for the parties to communicate in a more effective way. At this point, as argued by Respondent's counsel, the Company did not need to respond to the grievances at step 1 or 2 because the Union did not follow the preceding condition of providing a list of grievances to be heard at the next grievance meeting, and a detailed basis for the grievances. See *Solution One Industries*, supra.

Although Respondent never claimed that the Union's failure resulted in a grievance being withdrawn, the Union frequently issued grievance granted letter when a grievance was not heard within 30 days. Further, despite the Union's claims, Respondent did schedule and hold grievance meetings from October 2020 through May 2023. Respondent sent out reoccurring meeting requests, and the Union attended these meetings. The Union also added additional unilateral parameters limiting how quickly grievances could be addressed: only Brooks could represent the Union at grievance meetings, and the information requests, no matter the complexity, had to be received within 14 days and until the information was received, the Union did not want to schedule the grievance to be heard. The Union often would not grant requests for extensions of time as well.

As indicated, the Company is also at fault for the breakdown of the grievance side agreement, but their conduct does not rise to the level of abrogation. Notably, the Union never complained about these deficiencies, but instead claimed at times that no grievance meetings were held, which is clearly untrue based on the documentary evidence where grievances were heard and resolved. From the beginning, Respondent did not schedule 3 full business days to hear the grievances filed from May 15, 2016, through May 15, 2020, did not schedule 2-hour bimonthly meetings to discuss grievances filed after May 15, 2020 (or July 1, 2020, as Brooks and Ford agreed), and did not consistently provide grievance responses in writing. In addition, Respondent did not address the Union's grievance granted letters.

The documentary evidence also does not support a repudiation of the grievance side agreement. Many grievances were heard and resolved as the parties stipulated. Many grievances also moved to arbitration, but the Union often did not act further. Some of these grievances were resolved. In one example, the Union moved a grievance concerning R. Williams to arbitration in August 2020, but then 3 months later claimed that his grievance should be granted because there was no response to a grievance meeting. This grievance, though, is missing from the list of outstanding grievances compiled by counsel for the General

Counsel and the Union (R20-44). The correspondences and record-keeping between the parties also made it unclear as to which grievances had been resolved and which ones needed to be addressed.

When these facts are closely examined, the evidence does not support a repudiation by Respondent but instead shows that both sides interpreted and implemented the grievance side agreement as they believed while waiting for the other side to concede. The sheer volume of grievances and information requests filed by the Union along with the parties disagreeing on how to implement the terms of the grievance side agreement led again to a breakdown of their process and the backlog of grievances. This breakdown cannot be attributed solely to Respondent. Moreover, this issue is a matter of contract interpretation, not an unfair labor practice violation. As such, it is unnecessary to address Respondent's alternative theory that they had a sound arguable basis for their interpretation of the grievance side agreement.

Thus, these allegations are dismissed.

G. The Perfect Attendance Program

Respondent's Perfect Attendance Program (PAP) (Absence Free Recognition Program Baytown Complex Practices (BCP)-1009) awarded employees gift cards for maintaining no absences from work (Tr. 271, 461–462, 796–797; R. Exh. 39). All bargaining unit employees were eligible (Tr. 272). Employees who maintained perfect attendance for multiple years earned more money for each yearly gift card received (Tr. 271). The gift card dollar amounts increased from $75 per year to $200 for multiple absence free years (Tr. 272, 462–463).

On February 18, 2020, Ford sent Brooks an email informing him that the PAP would be discontinued in 2020 for all three bargaining units (Tr. 797–799; R. Exh. 11; GC Exh. 55). The PAP is not contained in the CBAs (Tr. 465, 797). The next day, the Union demanded to bargain and stated that an information request would be forthcoming. Later that day, Ford agreed that Respondent would bargain and would not make any changes to the PAP. Ford asked Brooks to send him the information request, and dates to meet to bargain (R. Exh. 11; Tr. 799).

Ford testified that Respondent initially decided to discontinue the PAP because of data tracking errors as to which employees should and should not receive an award (Tr. 799–800). However, once the COVID-19 pandemic began, Respondent also did not want employees to work while they were ill to achieve an award. Furthermore, Respondent financially suffered due to the COVID-19 pandemic and attempted to enact cost saving measures (Tr. 800).

On February 20, 2020, Lopez communicated with Baytown managers that changes to both the PAP and the Safe Work Practices Team (SWPT) programs would not be announced until after bargaining with the Union. Lopez estimated bargaining could take 30 days along with responding to Brooks' information requests (GC Exh. 55).

Thereafter, during bargaining for the Refinery MOA, the Union agreed to discontinue the PAP for the Refinery bargaining unit employees in May 2020 (Tr. 273, 465, 470, 798; GC Exh. 51). The parties agreed as follows, "Effective as of the date of ratification of this agreement, the Perfect Attendance Program will be discontinued" (GC Exh. 51 (sec. 8)). During

those Refinery negotiations, the Union sent an information request regarding the PAP specific to Refinery bargaining unit employees (Tr. 474–475).

The parties stipulated that on June 2, 2020, Respondent's representatives discussed scheduling bargaining sessions for the Chem Plant and Lab bargaining units regarding the elimination of the PAP (Tr. 1244). But no dates were confirmed, and the parties did not meet to bargain (Tr. 475). Brooks testified that he does not send dates for bargaining, and that Respondent sets the dates and then Brooks agrees or disagrees with the dates set for bargaining (Tr. 469, 482–474). Furthermore, the Union did not send any counterproposals to Respondent's decision to eliminate the PAP (Tr. 475, 801).

On December 1, 2020, Lopez notified the Union that the PAP would end for the Chem Plant bargaining unit employees on December 4, 2020 (GC Exh. 18; R. Exh. 11). Although this notice concerned only the Chem Plant bargaining unit, the parties do not dispute that the Lab bargaining unit was also included in this notice. Respondent noted that the PAP would end because it had ended for the Refinery bargaining unit, there had been "declining recognition over the years," the program was administratively burdensome, and Respondent needed to reduce costs "in difficult business conditions" (GC Exh. 19; R. Exh. 11).

On December 3, 2020, the Union responded that no bargaining had occurred for the Chem Plant and the Lab bargaining units and demanded to bargain (Tr. 798). The Union also requested for the first time PAP information related to the Chem Plant and the Lab bargaining units (Tr. 476, 803; GC Exh. 20; R. Exh. 11). The Union requested from January 1, 2015, until the present, the total monetary amount of PAP recognition received by the Chem Plant and Lab bargaining unit employees.[15] The parties did not bargain, and Respondent eliminated the PAP for the Chem Plant and the Lab bargaining units on December 4, 2020 (Tr. 273, 276).

Legal Analysis

At complaint paragraph 13, the General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when eliminating the PAP for bargaining unit employees in the Chem Plant and Lab. The General Counsel alleges that the PAP elimination was a mandatory subject of bargaining, and that Respondent did not provide the Union with an opportunity to bargain and/or bargain to a good-faith impasse.

An employer violates Section 8(a)(5) and (1) of the Act if it changes employees' terms and conditions of employment which are material, substantial and significant without first providing their bargaining representative with notice and the opportunity to bargain about the change or reaching a valid impasse. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). Section 8(d) of the Act describes the obligation to bargain collectively and provides that employers and unions will meet at reasonable times.

The Board has made clear that the duty to bargain in good faith requires the parties to set forth proposals in good faith and to seek compromise and agreements, but the duty does not require endless discussions to be carried on against static positions. A union may waive its

[15] This information request is alleged as a violation of the Act at complaint par. 11(dd).

statutory right to compel the employer's maintenance of the status quo as to a particular term or condition. *Finley Hospital*, 362 NLRB 915, 916 (2015), enfd. denied 827 F.3d 720 (8th Cir. 2016). When a union receives timely notice of a change in working conditions, the union must take advantage of that notice if it is to preserve its bargaining rights and not be content to merely protest the employer's contemplated action. This lack of action amounts to a waiver of its right to bargain. *Clarkwood Corporation*, 233 NLRB 1172 (1977); *Kentron of Hawaii*, 214 NLRB 834 (1974).

A party may declare impasse, and it is that party's burden of proof. *CalMat Co.*, 331 NLRB 1084, 1097 (2000). In *Taft Broadcasting*, 163 NLRB 475, 478 (1967), review denied sub nom. *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), the Board set forth the following factors to determine whether the parties were at impasse: bargaining history, good-faith negotiations by the parties, the length of negotiations, the importance of the issue or issues as to whether there was a disagreement, and the contemporaneous understanding of the parties as to the state of the negotiations. A contemporaneous understanding of impasse does not require the parties to mutually agree on the state of negotiations but rather each party must independently and in good faith believe it is "at the end of [its] rope." *PRC Recording Co.*, 280 NLRB 615, 635 (1986), enfd. 836 F.2d 289 (7th Cir. 1987).

To determine whether a party has engaged in surface bargaining or bad-faith bargaining, the Board will look at the party's overall conduct, including delay tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, designating an agent lacking sufficient authority to bargain, withdrawal of tentative agreements, and arbitrary scheduling of meetings. *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). The duty to bargain is not violated by an employer's implementation of a proposal which it made, when a union merely "objects" and does not present a reasoned proposal or request to negotiate further. *Austin-Berryhill, Inc.*, 246 NLRB 1139 (1979).

Even if the employer makes a unilateral change to a term and condition of employment, an employer may assert various defenses, including asserting that the contractual language permitted it to make the disputed changes without further bargaining (the "contract coverage" defense). In other words, the Union contractually waived its right to bargain. Under contract coverage, the Board will give effect to the plain meaning of the relevant contractual language by applying ordinary principles of contract interpretation. The threshold question is whether the unilateral change "falls within the compass or scope of the contract language that grants the employer the right to act unilaterally." *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 11 (2019). The Board will not require that the agreement specifically mention, refer to, or address the employer's decision at issue. If so, the change will not constitute an 8(a)(5) violation. If the contract coverage defense is not met, the Board will determine whether the union waived its right to bargain about a challenged unilateral action. *MV Transportation*, supra at slip op. at 11–12 (2019). However, in *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024), the Board overruled *MV Transportation*, and returned to the clear and unmistakable waiver standard, which "requires bargaining parties to unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply." Id. at slip op. 1. The Board "looks to the precise wording of the relevant contract provisions." *Hospital Español Auxilo Mutuo de Puerto Rico, Inc.*, 374 NLRB No. 6, slip op. at

5 (2024). Further, management-rights clauses expressed in general terms and making no reference to any particular subject will not be considered as a waiver of statutory rights to bargain over a specific subject. *Endurance Environmental Solutions*, supra, slip op. at 18. The Board left resolution of retroactive application of *Endurance Environmental Solutions* to a future determination. Id. at slip op. 21.

Counsel for the General Counsel and the Union raise no specific arguments when alleging that Respondent unlawfully eliminated the PAP for the Chem Plant and Lab bargaining units in December 2020 without bargaining with the Union (GC Br. at 35–44).

Respondent does not contest that the PAP was a mandatory subject of bargaining, and the programs elimination was a material, substantial and significant change. However, Respondent argues that the Company bargained in good faith and reached a lawful impasse before eliminating the PAP. Respondent also argues that even if the parties did not reach an impasse, the Union waived its right to bargain the elimination of the PAP. Respondent further argues that the Union's information requests were designed to purposefully delay bargaining, and that the Union engaged in bad-faith bargaining (R. Br. at 68–71, 78–95).

The following are undisputed facts. In February 2020 Respondent gave timely notice of their intention to eliminate the PAP that year for all three bargaining units. Immediately, the Union requested to bargain and stated that an information request would be forthcoming for all three bargaining units. In May 2020, the parties bargained the program's elimination for the Refinery bargaining unit which was set forth in the MOA. During those negotiations, the Union submitted an information request pertaining to the Refinery bargaining unit.

Subsequently, in June 2020, the parties met again to discuss the PAP elimination for the other two bargaining units. But the parties did not select any dates for negotiations. Brooks testified that he did not send dates for bargaining, but Brooks' customary practice does not rule here. Once the Union has been provided notice of a proposed change to employees' working conditions, the onus is on the Union to request bargaining which may include proposing dates for bargaining if Respondent has not done so. Six months later, Respondent informed the Union that the PAP would be eliminated for the Chem Plant and Lab bargaining units on December 4, 2020. Only then did the Union request again to bargain and submit an information request, which seemed designed to delay the implementation. The information requested could have easily been requested months before, but the Union failed to do so. After the Union was given notice in February 2020 and again in June 2020, after concluding the Refinery bargaining, the Union needed to act with "due diligence" to request bargaining or find that it was waived its rights. *Bell Atlantic Corp.*, 336 NLRB 1076, 1086 (2001); *Haddon Craftsmen*, 300 NLRB 789, 790 (1990) (5-week delay after receiving notice waived union's bargaining rights), review denied 937 F.2d 597 (3d Cir. 1991).

Thus, I find that the Union received sufficient notice and an opportunity to bargain over the elimination of the PAP as pertinent to the Chem Plant and Lab bargaining units but waived its rights to bargain. Thus, this allegation is dismissed.

H. The Safe Work Practices Team

The safe work practices team (SWPT) is comprised of numerous teams of employees in all bargaining units set up by area of work who attended monthly safety meetings (Tr. 277–279). The SWPT had a budget of $75,000 per year to make safety corrections at the Baytown facility (Tr. 276–280). Since at least December 4, 1999, the SWPT awarded approximately $400 per member annually as recognition and participation, and employees could have been awarded an additional $175 for exceptional safety practices (Tr. 280–281, 805).

On June 5, 2020, Ford notified Brooks that due to the "current unprecedented business environment," Respondent decided "to eliminate the financial recognition associated with the SWPT program" (Tr. 479, 805–806; GC Exh. 21). Respondent had been contemplating this change since February 20, 2020. The SWPT program is not contained in the CBAs (Tr. 480–481, 805). That same day, Brooks replied that the Union demanded to bargain, named the union members who would be bargaining, and asked for Respondent to propose dates for bargaining. Ford responded that he would look for some time to bargain later that week (GC Exh. 21; Tr. 807).

The parties met to bargain over video conference on June 15, 2020 (GC Exh. 22). That same day the Union requested information by June 30, 2020, related to SWPT (GC Exh. 23).[16] On July 14, 2020, Respondent provided the requested information except for one response as they were waiting to receive the information (GC Exh. 24). Lopez wrote, "The Company is not eliminating Safety Recognitions. What is changing is the financial recognition that goes along with some of the safety recognition today" (GC Exh. 24).

The Union then requested more information regarding SWPT, due by August 4, 2020 (GC Exh. 25).[17] On August 18, 2020, Respondent replied to this second information request. On September 9, 2020, Brooks emailed Ford, accusing Respondent of bargaining in bad faith by placing the SWPT funds on hold and warned that no changes can occur without good-faith bargaining (GC Exh. 26). Brooks also asked more questions and requested more information (Tr. 294; Jt. Exh. 11(s)).

On October 8, 2020, the parties met to discuss Brooks' "questions regarding the SWPT data" (R. Exh. 12). The parties next met on October 19, 2020, to discuss SWPT (Tr. 810; R. Exh. 40).

On November 19, 2020, the parties met again regarding SWPT (Tr. 810). During this meeting, Ivy Mitchell (Mitchell), the Baytown Complex Employee Safety Coordinator who gathered the information responsive to the requests, discussed the information requested (Tr. 489–490, 810, 813–815).[18] The parties disagreed as to whether Respondent could provide employee specific award information, denoted by award type (Tr. 490–491, 661, 813). After this meeting, Brooks requested more information concerning SWPT and its financial recognition (Tr. 295–296; Jt. Exh. 11(z); R. Exh. 41).

[16] This information request is not at issue in this complaint.
[17] This information request is not at issue in this complaint.
[18] Mitchell did not testify.

Thereafter, Brooks made a series of more information requests, which were quite similar to one another and which Respondent viewed as expanding the scope of the proposed change to the SWPT. Brooks believed that changes to SWPT had already been made (Jt. Exh. 11(z)). These changes he believed to SWPT included the biannual gift cards and "turnaround gift card process" (Jt. Exh. 11(aa)). Again, on November 25, 2020, Brooks requested more information because the Union learned that the first responders and firefighters who are represented by the Union received gift cards presumably under SWPT (Jt. Exh. 11(bb)). The Union did not receive any of this information in writing.

On December 1, 2020, Lopez sent a letter to Brooks, informing him that Respondent would discontinue the SWPT safety recognition awards, could not find any additional individual data that the Union requested, and that the expansion of the bargaining process was not warranted as Brooks claimed (GC Exh. 27; R. Exh. 42). Lopez stated that the "Top 10 safety recognition program" would remain in effect. Ford testified that Respondent could not give individual award information to the Union because the information was maintained by Parago, a third-party system, which did not differentiate for each employee what awards the employee was awarded thereby making indistinguishable awards from PAP, SWPT or any other awards (Tr. 813–815, 914). This reply, from Respondent's view, responded to the Union's multiple information requests. Respondent provided a spreadsheet with aggregate award data per employee (Tr. 816, 914).

The Union admittedly did not make a counterproposal to Respondent because the Union believed the proposed changes encompassed more than originally noticed, and the Union did not receive the information needed to make any proposals (Tr. 298, 492, 811). On December 2, 2020, Brooks sent another request for information (Jt. Exh. Exh. 11(cc)).

On December 3, 2020, the Union responded to Respondent's December 1, 2020 letter. The Union noted that they had not received all the information requested, and that Mitchell's email from July 2020 expanded the changes Respondent intended to make. The Union further disagreed with Respondent's claims and stated that bargaining unit employees had not received gift cards, and that Respondent bargained in bad faith (GC Exh. 28). Respondent thereafter eliminated the SWPT safety recognition awards and did not bargain further with the Union (Tr. 299–300).

Legal Analysis

At complaint paragraph 14, the General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when eliminating the recognition awards related to the SWPT. The General Counsel alleges that elimination of the SWPT recognition awards was related to employees' terms and conditions of employment, is a mandatory subject for bargaining, and that Respondent made the changes without providing the Union with an opportunity to bargain and/or bargain to a good-faith impasse.

Counsel for the General Counsel simply argues that Respondent failed to bargain in good faith and declared impasse prematurely (GC Br. at 42–44). Respondent argues that the Company bargained to impasse with the Union regarding the SWPT recognition awards. Respondent also argues that the Union submitted numerous information requests designed to

delay any change to the SWPT awards, engaged in bad-faith bargaining, and waived its right to bargain by failing to make any proposals (R. Br. at 78–94).

Once again, the record establishes that Respondent did not violate the Act as alleged. Although Lopez did not claim that the parties were at impasse, the December 1, 2020 letter to Brooks may be construed as such. Lopez placed the Union on notice that the awards would be discontinued on December 4, 2020. Considering the *Taft Broadcasting* factors, a good-faith impasse existed in December 2020. First, the parties have a lengthy bargaining history and have negotiated numerous CBAs since the 1960s for three bargaining units at the Baytown facility. Second, the parties negotiated for 6 months with approximately four bargaining sessions. Third, regarding the good-faith negotiations by the parties, this factor favors Respondent. During that time, the Union submitted numerous information requests, which Respondent answered in writing and during the negotiation sessions. Particularly, Mitchell, who gathered the responsive information, responded to Brooks' additional questions about her search and what information could be provided. The evidence shows that these requests were somewhat duplicative but also expanded the scope of the change which Respondent constantly disputed. In response, Mitchell and Lopez informed Brooks, in writing and verbally, that they could not provide the information in the form the Union sought, and that these alleged changes were not associated with the elimination of the SWPT awards.

Despite this response, Brooks continued to ask for information about other changes he believed were related to the rescission of the SWPT recognition awards. Respondent also conveyed to the Union that the COVID-19 pandemic along with other financial reasons caused the necessity for elimination of the recognition award. By December, the parties reached loggerheads. The Union sought to expand the scope of bargaining as conveyed by its information requests, while Respondent repeatedly explained what information they had and what information they did not have as related to the proposed change, and that the changes were not as broad as Brooks claimed. The Union would not present any counterproposal. Six months after the notice of the proposed change, Respondent lawfully implemented the elimination of the recognition awards. Based on the facts presented, the parties reached impasse, and Respondent did not violate the Act. Thus, this allegation is dismissed.

I. The Slider Pay Policy

Since the 1980s, bargaining unit employees who temporarily perform supervisory work are placed in a slider or step-up position (Tr. 818). Qualifying supervisory work included employees filling in for first-line supervisors, training new wage employees, competent planners, and completing a turnaround (T/A) (shutting down a unit so equipment work can be completed offline which may take 45 to 90 days) (Tr. 305–306, 328, 352). Slider pool employees are slides for mechanical where employees may backfill a first-line supervisory role (Tr. 818). When in a slider position, the employee earns a higher rate of pay, known as "slide pay" (Tr. 250–251, 305–306). Any bargaining unit employee who remained in a slider position for 90 days also received slide pay for vacation or other leave, an arrangement known as "hard slide" (Tr. 307–308, 637–638, 827, 830; GC Exh. 29).

The Company selects which employees are in a slider position (Tr. 500–501). In 2019, Respondent began considering revisions to the slider pay policy (GC Exh. 56). On October 19,

2020, Respondent provided notice to the Union that the slider pay policy (BCP-1441) (dated 10/20) would be updated and effective on December 1, 2020, for all bargaining unit employees, including the Lab bargaining unit employees, as indicated by the language in the policy (GC Exh. 30 and 57; R. Exh. 43; Tr. 311–312). Grant Clifton (Clifton), Baytown refinery human resources advisor, who worked on special projects, noted that the proposal would change the past practice of granting slider pay (GC Exh. 57; R. Exh. 43). Ford explained that the slide rate of pay would not change, but Respondent revised which jobs qualified as slide jobs (jobs customarily performed by a first line supervisor) (Tr. 820, 878).

Ford testified that Respondent has the right to assign work per article 12 (classifications and work assignments) for the Refinery and Chem Plant bargaining units. Ford also explained that Respondent planned to eliminate the hard slide position with the revised slider pay policy (Tr. 827). Article 12 of the May 15, 2020, Refinery and Chem Plant CBAs state that the Company has the right to assign process and mechanical employees work, including classification, work assignment and jobs (GC Exh. 48, 50). Moreover, the Company has the right to determine the number of employees assigned to a process area, classification, work assignment or job at any time. The Company may also alter the duties of the classifications, and create, fill, and place into effect new classifications at rates of pay provided for in article 11 (rates of pay). The provisions in the CBAs have remained the same since at least May 15, 2013 (GC Exh. 42, 44, 45, 47, 48, 50). However, the Lab CBA does not contain a comparable CBA article (GC Exh. 43, 46, 49).

On October 19, 2020, in response, the Union demanded to bargain the changes to the slider pay policy (Tr. 498–499, 821). The Union also requested information about these changes (GC Exh. 31).[19] On October 26, 2020, Respondent provided the information as requested to the Union, and Ford set up a meeting (GC Exh. 32). In this response, Clifton replied to a request: "This document is the first official pay guidance that outlines slider pay for both the Baytown Refinery and Chemical Plant" (GC Exh. 32).

On October 30, 2020, Ford met with Brooks for slider pay bargaining (R. Exh. 13). During this meeting, Ford informed Brooks that supervisors had the right to decide which positions receive slider pay, and Brooks insisted that Respondent's decision to change the policy triggered a wage reopener. Ford disagreed because the rate of pay for sliders did not change (Tr. 823). Brooks admitted that he had three to four phone calls with Ford to discuss slider pay after he testified that the parties held no bargaining sessions (Tr. 318, 508). Thereafter, the Union submitted a second information request regarding the slider pay policy on November 12, 2020, after a meeting with Respondent (GC Exh. 33; R. Exh. 14, 46; Tr. 825).[20]

On November 19, 2020, Respondent provided the requested information on slider pay and held another discussion with the Union (GC Exh. 29, 34; R. Exh. 15, 44, 48). This information included the organizational chart for the Lab bargaining unit (GC Exh. 34). That day and the next, Clifton re-sent Brooks the 2019 slider pay information in quarter increments he had requested previously (R. Exh. 47).

[19] This information request is not alleged as a violation of the Act in this complaint (Tr. 506).
[20] This information request is not alleged as a violation of the Act in this complaint (Tr. 514).

Brooks explained that at this same time Respondent proposed changes to the performance assessment form (PAC form) which could impact bargaining unit employees' eligibility for slider pay (Tr. 319). However, on November 19, 2020, Lopez responded to Brooks' concern, "No responsive documents relative to satisfactory PACs and the ability to slide. Slider pay is at management's discretion. We don't at this time track less than satisfactory PACs for USW represented employees outside of the probationary period. The employees within the probationary period are ineligible for slide" (GC Exh. 34). The Union never complained that Respondent had not properly responded to the information requests (Tr. 831).

On November 24, 2020, Brooks requested more information as the Union reviewed the midterm proposal (R. Exh. 16).[21] On December 1, 2020, Respondent provided the additional requested information, which included information about the Lab bargaining unit (R. Exh. 17, 49, 50).

On December 3, 2020, Ford met with Brooks again to discuss slider pay (R. Exh. 18, 45). Ford followed up the meeting with a reiteration that changing the slider pay policy was not considered a wage reopener per the Refinery and Chem Plant CBA article 11 as the base rates were not changing, and that the target implementation date was December 7, 2020 (R. Exh. 19; Tr. 521–523, 833–834). The change concerned when an employee would receive slide pay (Tr. 834). Clifton sent revised information to the Union regarding slider pay guidelines on December 3, 2020 (R. Exh. 50).

On December 4, 2020, at 12:00 pm, Ford informed the Union that the parties had reached impasse on the slider pay changes "in the Baytown Refinery and Chemical Plant," and the change would go into effect on December 7, 2020 (R. Exh. 35, 51; Tr. 317–318, 835).[22] Respondent implemented the slider pay policy (review date 12/20) on December 7, 2020 (Tr. 836; GC Exh. 36; R. Exh. 51).

On December 4, 2020, Brooks responded to Respondent's declaration of impasse. Brooks wrote that it was "impossible" for the parties to be at impasse which was "false, misleading and without merit" (R. Exh. 51). Brooks noted that the Union had outstanding information requests pending and "has had very little time to understand the companies [sic] complex midterm proposal which for all intensive [sic] purposes was a wage reopener" (R. Exh. 51). Brooks continued that the Union had not made a counterproposal and had not rejected Respondent's proposal but has been "working diligently" to understand Respondent's proposal (R. Exh. 51; Tr. 520, 527–530, 834). Ford testified that Respondent had provided all requested information to the Union, and no information was "outstanding" as claimed by Brooks (Tr. 836). However, that same day, Brooks requested additional information which the Union did not receive (Tr. 660, 678; Jt. Exh. 11(gg)).

On December 7, 2020, Respondent implemented changes to the slider program (review date 12/20), including eliminating "hard slide" pay, prohibiting slider pay for vacation or sick leave, removing certain tasks and positions from the program that previously had received slider pay such as training wage employees and turnaround work, and permitting the removal of

[21] This information request is not alleged as a violation of the Act in this complaint (Tr. 519).
[22] This email marked as GC Exh. 35 was not moved or entered into evidence (Tr. 317–319).

employees with discipline or "less than satisfactory" performance reviews from eligibility for slider pay (GC Exh. 36; Tr. 320–328). The rate of pay pursuant to the slide program did not change (Tr. 656).

Christopher John Baker (Baker), who is a union steward and process technician but who has been working for the past 3 years for Respondent performing audits on the safe acts index team, testified that his audit position is a hard slide position (Tr. 638, 640). Due to the changes to the slider program, Baker no longer received slider pay for sick and vacation time (Tr. 638). Another employee Samantha Mata (Mata) did not receive slide rate pay in January 2021 due to the new rules but would have qualified before the changes to the program as to who and what roles were eligible (GC Exh. 52; Tr. 657–659). After Mata contacted Brooks, Brooks sent a reminder of his verbal request for information to Respondent on January 22, 2021 (Jt. Exh. 11(gg)). The Union did not receive a response (Tr. 660).

Legal Analysis

At complaint paragraph 15, the General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act eliminating hard slide pay, removing certain tasks and positions from the programs that previously received slider pay, and permitting the removal of employees with discipline or "less than satisfactory" performance reviews from eligibility for slider pay. These changes related to employees' terms and conditions of employment are mandatory subjects for bargaining, and the changes were made without providing the Union with an opportunity to bargain and/or bargain to a good-faith impasse.

Counsel for the General Counsel argues briefly that Respondent failed to bargain in good faith and declared impasse prematurely (GC Br. at 44). Counsel for the General Counsel argues, in the supplemental brief, that applying the clear and unmistakable waiver standard would not be manifest injustice because the CBA language replied upon by Respondent was negotiated prior to the Board's decision in *MV Transportation*. The applicable CBA language was agreed upon on May 15, 2020, but *MV Transportation* was decided on September 10, 2019. However, article 12 of the Refinery and Chem Plant CBAs remained unchanged since at least May 2013. Nevertheless, counsel for the General Counsel argues that Respondent was not permitted to make this change to the slider pay policy.

Respondent argues that the parties' bargaining history and four bargaining sessions concerning the slider pay policy supports its position that the parties were at a good-faith impasse. Further, Respondent argues that article 12 of the CBAs permitted Respondent to unilaterally determine which employees served as sliders and what criteria was used to select sliders. Respondent also argues that the Union negotiated in bad faith by requesting duplicative information and making no proposals. Finally, Respondent argues, in its supplemental briefing, that the Union waived its right to bargain pursuant to article 12 of the Refinery and Chem Plant CBAs, applying either the clear and unmistakable waiver provision or the contract coverage standard.

First, Respondent's arguments concerning the Union's waiver of its right to bargain due to the CBA language cannot apply to the Lab bargaining unit which contained no relevant CBA provision. Moreover, the parties never argued that the change to the slider pay policy did not

affect the Lab bargaining unit as well, even though the declaration of impasse only mentioned the Refinery and Chem Plant. The information request responses from Respondent certainly included information about the Lab bargaining unit. Thus, I will address the change applicable to the Lab bargaining unit after considering the arguments concerning the Refinery and Chem Plant bargaining units.

Slider Pay Policy as Applicable to the Refinery and Chem Plant Bargaining Units

In reviewing the plain language of the Refinery and Chem Plant CBAs, I find that both CBAs contained the same provision concerning the Company's right to assign and determine process and mechanical employees' work, including classifications, work assignments and jobs. Any changes to these provisions are within the scope of the parties' CBA. This would include changes to the slider pay policy whereby Respondent decided to clarify what work classified as slider pay. Respondent specifically discussed these changes in work assignments and classification of work in the CBA. Applying either the contract coverage standard or clear and unmistakable waiver standard yields the same result. Article 12 in both CBAs has been existence during both clear and unmistakable waiver and contract coverage Board laws. Further, although the parties did not present any evidence as to what was discussed during CBA negotiations, Respondent argues that the slider pay policy has been in effect since the 1980s.

The contract coverage standard, arguably easier to prove for an employer, shows that article 12 plainly covers such revisions to the slider pay policy as Respondent determined. Respondent offered to discuss this change to the eligibility for slider pay with the Union, and incorporated some changes as offered by the Union. However, Respondent continued to take the position that bargaining was not required. Even with the clear and unmistakable waiver standard, as set forth in *Endurance Environmental Solutions*, article 12 concerns Respondent's right to make changes to work assignments and to determine the work of these employees which would include assigning supervisory duties qualifying the employee for slider pay. It is undisputed that Respondent has always assigned slider work to employees, without any bargaining obligation to the Union. I find that article 12 contains more than generic terms for assignment of work. Article 12 states that the parties recognize that the Company needs to consider the knowledge and abilities of employees for effective operations of the Baytown facility. Article 12 also acknowledges Respondent's right to prescribe, consolidate, transfer and alter existing work areas. Thus, although article 12 does not specifically mention slider pay, I find that this specific language sufficiently demonstrates that the Union clearly and unmistakably waived its right to bargain for this change. Respondent lawfully could change the slider pay requirements for what positions and duties qualified.

In *Baptist Hospital of East Tennessee*, 315 NLRB 71, 72 (2007), the Board determined that the union clearly and unmistakably waived its right to negotiate a change in scheduling employees for holiday-shift work as the contract contained a provision giving the employer the right to determine and change starting and ending times, work shifts, and change the methods and means of how work will be conducted. Similarly, the Refinery and Chem Plant CBAs at article 12 specifically permit Respondent to consider the knowledge and abilities of employees when assigning work. And to that effect, the Company has the right to determine the performance of work, assigning classifications, work assignments, and can establish new areas or alter areas of work. This language supports the changes Respondent made to the

classification of slider pay as to what work will qualify. Thus, when applying either the holding in *MV Transportation* or *Endurance Environmental Solutions*, the Union as to the Refinery and Chem Plant bargaining units waived its right to negotiate the changes made by Respondent.

Slider Pay Policy as Applicable to the Lab Bargaining Unit

Turning to the Lab bargaining unit, I do not find that the Union waived its rights to bargain, either by CBA provision or in any other manner. Respondent made the determination that it did not have an obligation to bargain the changes for any of the bargaining units because of the contractual language in the Refinery and Chem Plant CBAs. Respondent erroneously included the Lab bargaining unit in this bargaining decision. Respondent informed the Union of the change effective in December 2020 but had no intention of bargaining for any bargaining unit, including the Lab bargaining unit. The change was a fait accompli. See generally *Weyerhaeuser NR Co.*, 366 NLRB No. 169, slip op. at 8 (2018) (changes were presented as a fait accompli in the absence of a clear and unmistakable waiver). Although the Union submitted various information requests, and did not present any proposals to Respondent, I find that Respondent's actions from the notice to the Union were set in stone. Respondent had no intention of bargaining due to its initial position of no bargaining obligation based on the CBA language, which was correct for the Refinery and Chem Plant bargaining units, and wrong for the Lab bargaining unit. In sum, Respondent did not violate the Act as alleged regarding the Refinery and Chem Plant bargaining units when implementing changes to the slider pay policy, but violated the Act as alleged regarding the Lab bargaining unit.

J. Performance Assessment Form

Since 1999, Respondent has used a performance assessment form (PAC form) to review annually employee performance, or every 4 months for probationary employees during their first 15 to 18 months of employment based on work location (Tr. 232–233, 533, 838–839). Respondent revised the PAC form, which is not addressed in the CBAs, many times over the years without any requests to bargain from the Union until 2018 (Tr. 839–840). Ford testified that the PAC forms have never been used to discipline employees, used in disciplinary arbitrations, or used to determine wage increases or promotions (Tr. 534, 839–840).

October 2018 PAC Form Changes

On August 16, 2018, the Union demanded to bargain changes to the PAC form (GC Exh. 9). Brooks testified that the Union became aware of the changes to the PAC form from bargaining unit employees (Tr. 237–238). The Union also submitted an information request to Respondent (R. Exh. 20).[23]

On September 12, 2018, Ford and Brooks discussed the changes to the PAC form (R. Exh. 52). On September 18, 2018, Respondent notified the Union that there was no obligation to bargain the changes on the PAC form as the changes made were not material. Respondent took the position that they have used various PAC forms in the past and continue to evaluate

[23] This information request is not alleged as a violation of the Act in this complaint (Tr. 549, 552).

employees with the same criteria (Tr. 541, 840, 843; GC Exh. 10; R. Exh. 53). Nevertheless, Respondent agreed to meet and confer to improve the parties' relationship (GC Exh. 10; R. Exh. 53). Respondent offered to meet on October 2, 10, and 17, 2018 (GC Exh. 10).

The Union responded on October 1, 2018, disagreeing with Respondent's position on its bargaining obligation, and sought to bargain the decision and the effects of the changes to the PAC form (GC Exh. 11). The Union provided who would be bargaining on behalf of the Union and the following dates to bargain: October 10 and 17, 2018 (GC Exh. 11). Brooks argued that probationary employees can be and have been terminated due to their PAC reviews, but Ford disagreed, explaining that probationary employees are at-will employees and can be terminated without the PAC form evaluation (Tr. 844).

On October 8, 2018, Respondent replied that the changes to the PAC form are de minimis, and Respondent had no obligation to bargain but would bargain as a gesture of good faith (GC Exh. 12). Michael Stender (Stender), human resources operations manager, requested that Brooks send a list of concerns about the PAC form and/or proposal as soon as possible so the upcoming meeting would be productive. Brooks did not reply to Stender's request and testified that the Union's concerns were reflected in the August information request (Tr. 543-546). Brooks also did not submit a proposal to Respondent because he did not receive a response to the information request (Tr. 547, 553).

On October 10, 2018, the parties met briefly but Respondent did not provide the requested information as it was overbroad, burdensome and improper interrogatories (Tr. 243–244; GC Exh. 14). However, Ford provided a general response to Brooks' information request (GC Exh. 14; Tr. 548). Also, at this meeting Respondent stated again that they were not required to bargain (GC Exh. 13). Respondent noted that variations of the PAC form have been used for the past 30 years and that employees are encouraged to participate in the performance process. Respondent provided responses to the assessment criteria (GC Exh. 14).[24]

On about October 18, 2018, Respondent implemented changes to the PAC form, including changes to employee evaluations, criteria and procedures modifying the requirements for an employee's overall performance rating (GC Exh. 8). New metrics were added, categories were consolidated, and new terminology included (GC Exh. 15; Tr. 247–248). Brooks testified that with fewer categories and critical functions, employees had "more room for error" (Tr. 248). Furthermore, prior to 2018, employees were not required to participate in the performance assessment process (Tr. 248–249).

Brooks testified that prior to 2018, a poor performance review resulted in no consequences to the employee, but in 2018 with the changes to the PAC form, Brooks explained that the consequences of the changes led to employees being removed from the slider position (Tr. 250). C. Stanley testified that he has represented Respondent in about 30 employee discharge arbitrations, and the PAC form was not used by Respondent to justify termination (Tr. 1045–1046).

[24] This information request is not alleged as a violation in this complaint.

September 2021 PAC Form Changes

On June 30, 2021, Ford and Fields scheduled a meeting for July 1, 2021, with Brooks to discuss new changes to the PAC form (R. Exh. 23). The changes on the 2021 PAC form included fewer competencies with the merging of safety and loss prevention as one competency rather than two (Tr. 264). Ford testified that Respondent sought to include the safety program as part of the PAC form evaluation, to condense and consolidate categories, and to change to an electronic version of the PAC form (Tr. 847–848). Ford explained that revisions to the PAC form created an easier version for supervisors to discuss with employees, employees could type in their comments, and electronically the PAC form could be sent to department heads for easy review (Tr. 848, 850).

On June 30, 2021, Brooks again demanded to bargain the changes to the PAC form (R. Exh. 22, 54; Tr. 846). Brooks wrote, "Once we have had time to evaluate this process beside the existing one that is also pending arbitration, we will submit any information request to you for that bargaining" (R. Exh. 22, 54). Thereafter, on July 6, 2021, Brooks noted that the PAC form appeared to have a "peer to peer element" which he wanted to confirm and requested related information (R. Exh. 22). Brooks wrote that the Union would continue to go over the midterm proposed change (R. Exh. 22). On July 7, 2021, Ford replied that he would schedule a meeting to discuss the proposed PAC form changes (R. Exh. 54). Another PAC form review meeting was scheduled for July 12, 2021 (R. Exh. 23, 54).

On July 12 and 13, 2021, in advance of changes to the PAC form, the Union posed questions to Respondent (Tr. 260; GC Exh. 16 and 18; R. Exh. 55). With this version of the PAC form, Respondent intended to solicit employees to provide information on co-workers to be included on the PAC form (Tr. 259).

On August 4, 2021, Ford and Fields met again to discuss the changes to the PAC form with Brooks (GC Exh. 16). Brooks provided a written summary of the meeting, and one of the Union's concerns was that safety would be included in the evaluation and peer review (GC Exh. 16). On August 18, 2021, Brooks again reminded Respondent that information they requested still had not been provided (GC Exh. 16).

Respondent implemented these changes on September 15, 2021, as Respondent viewed the changes as de minimis (Tr. 262; R. Exh. 56). The changes included consolidating previously separate categories of review criteria, adding new criteria, and modifying the requirements for an employee's overall performance rating (GC Exh. 17 and 18). The Union also had not been provided with the information requested (GC Exh. 17). The Union did not submit any formal proposals to Respondent (Tr. 556–557). However, Brooks made suggestions to changes with the PAC form which Respondent incorporated (Tr. 849).

Legal Analysis

At complaint paragraph 16, the General Counsel alleges Respondent violated Section 8(a)(5) and (1) of the Act when implementing changes to the PAC form on October 18, 2018, and September 15, 2021. The General Counsel alleges that the PAC form related to employees' terms and conditions of employment, is a mandatory subject for bargaining, and that Respondent

made the changes without providing the Union with an opportunity to bargain and/or bargain to a good-faith impasse.

Counsel for the General Counsel argues that Respondent's changes in 2018 and 2021 to the PAC form was material, substantial, and significant (GC Br. at 37–38). In contrast, Respondent argues that these changes were not material, substantial or significant as employees are not affected by the results. Respondent also argues that the Union waived its right to bargain the de minimis changes as they did not request to bargain in the past and made no proposals even when provided the opportunity (R. Br. at 97–105).

In this instance, for both the 2018 and 2021 changes to the PAC form, Respondent was obligated to bargain as these changes were more than de minimis. As outlined by the Union, the 2018 PAC form changed with more details included. The 2021 PAC form changed with the addition of a new criteria of safety along with changing the form to an electronic version. Generally, a performance assessment is a mandatory subject of bargaining, and here, Respondent made changes to the pre-existing form which had a material, substantial, and significant impact on employees' terms and conditions of employment. The 2018 and 2021 PAC forms appeared to evaluate more criteria for employees and appeared to rate these categories differently than in the past. Such changes are significant and more than de minimis. Although the Union did not request to bargain these changes to the PAC form prior to 2018, such action did not prevent the Union from doing so later. "A union's acquiescence in previous unilateral changes does not operate as a waiver of its right to bargain over such changes for all time." *Owens-Corning Fiberglas*, 282 NLRB 609 (1987). These changes were not cosmetic or minor as Respondent argues but were changes that had a more than de minimis impact on employee evaluations. The changes in the evaluation criteria may affect an employee's tenure as well as advancement. Respondent presented these changes, and did not give the Union a meaningful opportunity to bargain. Thus, Respondent violated the Act as alleged.

K. Information Requests

The Union submitted numerous information requests to Respondent. Generally, most grievances also had a correlated information request. In each request, the Union justified the need for the information to represent its members by stating that the Union was entitled to the information "under well-established NLRB precedent," to support a grievance filed, or for bargaining. Ford testified that the Union submitted an average of 150 information requests per year (Tr. 750). Due to the numerous allegations in this complaint regarding the information request, the specific allegations and legal analysis are combined.

Legal Analysis

The General Counsel alleges at complaint paragraph 11 that Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish or failing to timely furnish information requested by the Union between May 2019 and September 2021.

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 includes providing relevant grievance-processing materials. *Postal Service*, 337 NLRB 820, 822 (2002). Information pertaining to unit employees is presumptively relevant and must be provided by the employer. See *Tegna, Inc. d/b/a KGW-TV*, 367 NLRB No. 71, slip op. at 2 (2019); *Disneyland Park*, 350 NLRB 1256, 1257 (2007). The standard for relevance is a "liberal discovery-type standard," and the requested data need only have a bearing upon the issue. *Pfizer, Inc.*, 268 NLRB 916 (1984).

An employer's duty to furnish information includes the duty to promptly furnish the union with information necessary and relevant to collective-bargaining negotiations. *George Koch Sons, Inc.*, 295 NLRB 695, 695 (1989). In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. An employer must provide a reasonably good-faith effort to respond to the request promptly as circumstances allow. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "The Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information." *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

Counsel for the General Counsel argues that the Union requested presumptively relevant information, and Respondent should have timely provided the information, or timely objected. Counsel for the General Counsel also argues that the information Respondent provided was unreasonably delayed, and that Respondent should have provided the information within 14 days as requested by the Union, or Respondent should have asked for an extension of time to respond (GC Br. at 33–35).

Respondent argues that it was not obligated to respond to the information requests due to the voluminous requests which were not made in good faith. Respondent also argues that the General Counsel has not established that the requests were relevant (R. Br. at 105–107). Respondent provided no specific arguments as to why some of the information requests were not addressed contemporaneously.

(1) On May 14, 2019, the Union requested performance and discipline information by May 19, 2019, but Respondent did not respond to or provide this information. Specifically, the Union requested (i) all discipline and discipline documentation, including coaching and counseling, oral reminders, written reminders, Decision Making Leaves (DMLs), and terminations, issued to USW represented employees from January 1, 2019 through April 30, 2019, per work area; and (ii) the number of "needs improvement" as well as "unsatisfactory" performance assessments (PACDs) for USW represented employees from January 1, 2019 through April 30, 2019, per work area (Jt. Exh. 11(a)).[25]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

[25] Complaint par. 11(a).

(2) On May 22, 2019, the Union requested pay code change information by June 6, 2019, but Respondent did not respond to or provide this information. Specifically, the Union requested all payroll authorization forms for USW represented employees from January 1, 2014, until current in which one of purposes of the payroll authorization was to change pay code HB and DR (Jt. Exh. 11(b)).[26]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(3) On July 18, 2019, the Union requested information regarding grievance R19-42, unsafe actions by management by August 1, 2019, but Respondent did not respond to or provide this information. Specifically, the Union requested (i) payroll records for [two employees] from June 1, 2019 until current, including Date, Shift, Pay Code, ERN, CRI, and dollar amount per hour per coding; (ii) any and all emails from the company to [the two employees] concerning the assignment from their home arca to HSK; (iii) payroll records for all HSK employees from June 1, 2019 to current who were assigned to FISK post from June 1, 2019 to current, including Date, Shift, Pay Code, ERN, CRF, and dollar amount per hour per coding; and (iv) HSK manpower sheets for June 1, 2019 to current (Jt. Exh. 11(c)).[27]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information, including grievance processing information, it is presumptively relevant. Respondent violated the Act as alleged.

(4) On September 11, 2019, the Union requested certain information including information on fires and process safety events by September 25, 2019, but Respondent did not respond to or provide this information. This information requested was a follow-up to a prior request that the Union believed had not been completely responded to by Respondent. Specifically, the Union requested (i) the test/or tests that is proposed to be utilized to validate comprehension of the pre-lift plan and/or pre-lift briefing expectation, either the computer-based test and/or the non-computer-based test. Also provide the same for that of pre-lift briefing; (ii) a copy (not a picture) of the completed and non-completed pre-lift plan; (iii) the test/or test that is proposed to be utilized to validate comprehension of the establishment and managing barricades around exclusion zones, either the computer based test and or the non-computer based test; (iv) What is meant by "manage barricade." If employees choose to utilize a human barricade for an exclusion zone, could someone allege that the number of people utilized for this barricade was insufficient and levy a LSR violation for failure to manage barricade on the group? If one of the LSR's were to be alleged for failing to manage barricade, which group world this fall upon—the process group, the mechanical group, or both, specifically the issuer or recipient of a permit? If the alleged LSWR was in a non-permitted area, which member of the group would this allegation fall upon, or would it fall upon the whole group? (v) the test/or tests that is proposed to be utilized to validate comprehension of

[26] Complaint par. 11(b).
[27] Complaint par. 11(c).

touching a suspended load with any part of the body, either the computer-based test and/or the non-computer-based test; (vi) the form and/or documentation utilized to approve touching a suspended load. Is there a form utilized and signed by the Crane and Lifting Supervisor allowing the touching of a suspended load? Is the company claiming that this approval is only verbal or is this approval documented on a form? (vii) the form and/or documentation utilized to gain entrance into an exclusion zone. Is there a form utilized and signed by the Lift Crew to allow entrance into an exclusion zone? Is the company claiming that this approval is only verbal, or this approval documented on a form? (viii) the test/or tests proposed to be utilized to validate comprehension for that of defeating crane safety functions. This is to include computer based test as well as non-computer based tests; (ix) a complete copy of the C&L TI BP, FET 394, FET-395, FET-396, AND FET-120; (x) identify who in the July 31, 2019 response from the company refers to themselves as "myself" and whether Joshua Lopez provided additional training in addition to computer based training; (xi) a copy of the additional training provided by Carl Price and someone identified as "myself"; (xii) a list of the ExxonMobil Personnel who attended or that accepted the additional training which was in addition to computer based training; (xiii) a complete copy of SAF_SCR-EB-BTA-Crane & Lifting Saving Actions (MWP 9070); (xiv) the passing scoring criteria for all of the testing utilized to validate comprehension of all testing regarding that of C&L. If the passing criteria is different per each test, specify each test and the passing criteria for each test; (xiv) whether or not the training is different for USW personnel who are in process or in a craft that does not involve any and or minimal C&L support versus those USW personnel who are in the C&L department and/or that their craft requires abundant amounts of C&L support; and (xvi) the most current revision of MWP-9080 and MWP-9070 (Jt. Exh. 11(d)).[28]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(5) On October 9, 2019, the Union requested information on company issued cell phones by October 23, 2019, but Respondent did not respond to or provide this information. Specifically, the Union requested (i) the complete list of all USW represented employees who have been issued and/or that are currently issued a cell phone provided by the company. This is to include the date the cell phones were issued to the USW represented employees as well as the date they were turned back in or if they are still assigned to the USW represented employee; (ii) the policy or procedure for that of company issued cell phones along with the dates in which the company provided this information to the USW represented employees that were issued company cell phones; (iii) the training provided to USW represented employees that were issued or that currently have company cell phones issued to them; (iv) of the list of USW represented employees that were issued company cell phones, was it the expectation that these cell phones be taken home or was there clear and concise direction given by the company to the employee to leave the company issued cell phones at work? If USW represented employees were instructed to and/or were given the ability/permission to take the company issued cell phones home,

[28] Complaint par. 11(d).

did the company keep track of calls from the site to the phone and or emails sent and responded to by the USW represented employee during their time off for purposes of pay and following the CBA as well as the FLSA? Did the company inform the USW represented employees assigned company cell phones that answering emails, calls and/or text messages that are work related is in fact working and that compensation is required under the law and the CBA? If no, can the company explain why it first assigned wage employees cell phones and then allow them to take them home so that they had them during their off time but did not educate or inform them that any time spent on the phone for purposes of business was work and was to be paid time?; and (v) any and all communications from the company to the Union regarding that of company issued cell phones for USW represented employees (Jt. Exh. 11(e)).[29]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(6) On January 7, 2020, the Union requested discipline and performance information by January 21, 2020, but Respondent did not respond to or provide this information. Specifically, the Union requested (i) all discipline and discipline documentation, including coaching and counseling, oral reminders, written reminders, DMLs, and terminations, issued to USW represented employees from August 1, 2019 through December 31, 2019, per work area; and (ii) the number of "needs improvement" as well as "unsatisfactory" PACDs for USW represented employees from August 1 2019 through December 31 2019, per work area (Jt. Exh. 11(f)).[30]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(7) On March 16, 2020, the Union requested medical and personnel information regarding an employee by March 30, 2020, but Respondent did not respond to or provide this information. Specifically, the Union requested copies of the contents of [an employee's] personnel file, to include but not limited to disciplinary contacts, performance evaluations, attendance records, positive discipline logs and any other notes, memos or documentation that relate to [the employee's] employment with the company. If the company or its supervisors maintain employment records or documentation relation to [the employee's] employment in any other place in addition to [the employee's] personnel file, this request is intended to cover those sources as well (Jt. Exh. 11(g)).[31]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

[29] Complaint par. 11(e).
[30] Complaint par. 11(f).
[31] Complaint par. 11(g).

On April 2, 2020, Ayala sent an email to Ford listing all outstanding information requests from August 5, 2019, through March 16, 2020. Ayala asked Ford when this information would be received by the Union. Ford did not respond (Jt. Exh. 11(h)).

(8) On April 21, 2020, the Union requested an employee's harassment investigation file by May 5, 2020, but Respondent did not respond to or provide this information. Specifically, the Union requested Respondent provide the entire harassment investigation for [an employee], including all witness statements, the name of the investigators, the date in which the investigation began and the date the investigation concluded, any investigation summaries and or matrices developed during the investigation. This request is for the entire investigation and evidence collected by the company investigators i.e. pictures, emails, videos, voice recordings, text messages, call logs, instant messages, Facebook and or other social media platforms regarding this case (Jt. Exh. 11(i)).[32]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(9) On April 22, 2020, the Union requested information on mechanical overtime by May 6, 2020, but Respondent did not respond to or provide this information. Specifically, the Union requested (i) weekend coverage list of USW represented employees from January 1, 2015 until current showing employee's name, date/s of overtime, and hours worked for the date/s; (ii) call-out logs for any and all jobs from January 1, 2015 until current in which the company called out USW represented Mechanical employees on their time off, including employee's name, date/s of overtime, and hours worked for that date; and (iii) any and all overtime that was assigned and taken before the end of the USW represented employee's shift ended from January 1, 2015 until current, including employee's name, date/s of overtime, and hours worked for that date (Jt. Exh. 11(j)).[33]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information including grievance information it is presumptively relevant. Respondent violated the Act as alleged.

(10) On May 20, 2020, the Union requested seniority lists by June 4, 2020, but Respondent did not respond to or provide this information. Specifically, the Union requested a copy of the Refinery and Chemical Plant, Process and Mechanical and Technical Seniority Lists, broken down as Process and Mechanical for both contracts with Technical separate (Jt. Exh. 11(k)).[34]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

[32] Complaint par. 11(i).
[33] Complaint par. 11(j).
[34] Complaint par. 11(k).

(11) On June 4, 2020, the Union requested an employee's harassment investigation file by June 18, 2020, but Respondent did not respond to or provide this requested information. Specifically, the Union requested the complete investigation for that of harassment in the workplace filed by [an employee], including the date of the investigation began and the date the investigation concluded, the names of the investigators and all witness statements, photos, videos, voice recordings, emails, text messages, instant messages and any other items utilized and or reviewed during the investigation. Also include the investigation summary (Jt. Exh. 11(n)).[35]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(12) On June 19, 2020, the Union requested information regarding an employee's disciplinary grievance by July 2, 2020, but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) all board reviews [an employee] had had and that are referenced in the Unjust DML document dated 6/17/20; (ii) all manpower sheets for FXK denoting [the employee's] training as well as trainer for that of Post "A"; (iii) all management resources the company claims to have devoted to [the employee]; and (iv) all discipline administered by the company from January 1, 2016 until current for that of inadvertent dozing and for failure to qualify on a post (Jt. Exh. 11(o)).[36]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information including grievance processing information it is presumptively relevant. Respondent violated the Act as alleged.

(13) On July 1, 2020, the Union requested an employee's drug and alcohol testing information by July 16, 2020, but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) the complete investigations of [an employee] for both the Injury/Incident as well as any investigation into the issue of D&A testing an employee days after said event/issue as well as the use of Field Drug Screening kits. This is to include witness statements, pictures, videos, voice recordings, emails, text messages, instant messages utilized or produced by the investigators; and (ii) the loss investigation in its entirety (Jt. Exh. 11(p)).[37]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(14) On July 1, 2020, the Union requested medical records and drug and alcohol test results for the same employee as the drug and alcohol testing information by July 16,

[35] Complaint par. 11(n).
[36] Complaint par. 11(o).
[37] Complaint par. 11(p).

2020, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) the medical file for [an employee]; and (ii) copies of [the employee's] Drug & Alcohol Test results (Jt. Exh. 11(q)).[38]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

On July 7, 2020, Ayala sent another email to Ford listing the outstanding information requests since August 27, 2019, through June 18, 2020. Ayala asked Ford to let her know if he had any questions. Again, Ford did not respond (Jt. Exh. 11(r)).

(15) On September 9, 2020, the Union requested further information regarding gift cards given to employees, but Respondent did not respond to or provide this information. The Union had requested to bargain this change in working conditions and needed this information in connection with the request to bargain. Specifically, the Union requested (i) did the company supply USW Represented employees quarterly gift cards for 1st, 2nd, and 3rd quarter of 2020; (ii) does the Employer also have plans to provide such in the 4th quarter of 2020; (iii) can you explain in detail what quarter and or month or day the practice was changed; (iv) please explain the statement SWPT funds are on hold; (v) when was the last payment made to USW Represented employees in 2020; and (vi) when will this hold a funds be lifted? (Jt. Exh. 11(s)).[39]

Respondent is obligated to respond to this information request and failed to do so. This information request was submitted by the Union during bargaining for the elimination of the SWPT recognition awards. Although the parties had discussions about the "questions" the Union posed, the record is unclear as to whether the Union received a response to this request. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

On September 29, 2020, Ayala sent another email to Ford listing all the outstanding information requests from January 7, 2020, through September 9, 2020, and asked Ford to send them to her as soon as possible. Ford did not respond (Jt. Exh. 11(t)).

(16) On October 26, 2020, the Union requested an employee's medical and personnel files in connection with a grievance filed on the employee's behalf by November 9, 2020. Respondent provided this information on March 24, 2021. Specifically, the Union requested (i) contents of [a named employee's] personnel file, to include but not limited to, disciplinary contacts, performance evaluations, attendance records, positive discipline logs and other notes, memos, or documentation that related to [the employee's] employment with the company; and (ii) any other maintained employment records or documentation relating to [the employee's] employment in any other places in

[38] Complaint par. 11(q).
[39] Complaint par. 11(s).

addition to [the employee's] personnel file (Jt. Exh. 11(u)). The General Counsel alleges that Respondent unreasonably delayed providing this information to the Union. [40]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(17) On October 28, 2020, the Union requested termination information on the same employee as the October 26, 2020, request for medical and personnel files, by November 11, 2020. Respondent provided the information requested on March 24, 2021. Specifically, the Union requested (i) provide complete investigation the company completed prior to terminating [the employee], this is to include any and all emails, instant messages, witness statements, meeting notes, voice recordings, audio recordings, videos and any procedures/policies reviewed and or utilized to make the termination decision as well as the investigation summary; (ii) provide all training records for [the employee] to include written tests taken on each post he qualified on as well as board review questions and answers and the names and positions of all board review members who completed board review with [the employee]; and (iii) provide complete investigation regarding [the employee's] claims of harassment, intimidation, and hostile work environment which was reported to the company. This is to include all witness statements, emails, instant messages, meeting notes, and voice audio or video recordings as well as the investigation summary (Jt. Exh. 11(v)). The General Counsel alleges that Respondent unreasonably delayed providing this information to the Union. [41]

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned an employee termination. The Union appears to be requesting information readily available to Respondent since the action was initiated by Respondent. However, Respondent waited 5 months to provide this information to the Union. Thus, Respondent acted unreasonably when delaying providing this information, and Respondent violated the Act as alleged.

(18) On November 2, 2020, the Union requested 315 form information by November 9, 2020, but Respondent did not respond to or provide this information. Specifically, the Union requested all 315 light duty forms from Fuels East Control Center from January 2017 to present and concurrent payroll codes for each 315 (Jt. Exh. 11(x)).[42]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(19) On November 5, 2020, the Union requested information on the competent planner test by November 18, 2020, but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) the Competent Planner test

[40] Complaint par. 11(u) and 12(s).
[41] Complaint par. 11(v) and 12(s).
[42] Complaint par. 11(x).

(in its entirety) which the Company committed during the 2020 bargaining with USW to construct and administer for USW represented employees to become a Competent Planner; (ii) the passing criteria for this Competent Planner test for USW represented employees; (iii) the number of USW represented employees who have taken the Competent Planner test; (iv) the pass/fail rate of the Competent Planner test for USW represented employees; (v) the date the Company began administering the Competent Planner test to USW represented employees; and (vi) whether the Competent Planner test is closed book or open book, if it is a CBA or a written test, and to what level is the Competent Planner test proctored (Jt. Exh. 11(y)).[43]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(20) On November 19, 2020, the Union asked for further information regarding gift cards in connection with bargaining, but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) the company agents made claim that what the parties had been talking about for months was a $400 allotment for each SWPT member and the union was surprised today that there may be differences between groups but the Union still requested this be broken down by employee and by SWPT team; (ii) the union still needs the relevant information and that information as we discussed is more than likely in the Parago system the company agents spoke about and this information for all-intensive [sic] purposes will more than likely be broken down into the appropriate buckets for that of quarterly or biannual gift cards; (iii) the relevant information for both of these as well as any other gift card programs that exist inside the safety recognition program for all USW represented employees and for all SWPT teams that have USW represented employees on the teams and this is to be by employee on each SWPT team' and (iv) the company transitioned from simply having employees sign for gift cards to that of electronic ecodes at some point and the Union requests that date of change (Jt. Exh. 11(z)).[44]

Here, Respondent informed the Union that the above information could not be obtained in the format requested. This discussion occurred during the November 19, 2020, bargaining sessions as well as by Lopez in his letter of December 1, 2020. Thus, contrary to the allegation, Respondent timely responded that this information did not exist. This complaint allegation is dismissed.

(21) On November 20, 2020, the Union requested more information concerning the safety recognition program. On December 1, 2020, Respondent refused to provide the information. Specifically, the Union requested (i) the Company's complete proposal for changes to the Safety recognition gift card process which is different from the long standing and consistently applied past practice and in detail; (ii) the lubes turnaround, the names of all Dewaxing personnel and process assist personnel who received gift cards as a result of meeting certain metrics during the lubes block downtime and the amounts of

[43] Complaint par. 11(y).
[44] Complaint par. 11(z).

each gift card and the dates they were issued; (iii) the names of all Extraction personnel and process assist personnel who received gift cards as a result of meeting certain metrics during the lubes block downtime and the amounts of each gift card and the dates they were issued; (iv) provide the document utilized to communicate/document and or lay out the biannual safety recognition program and associated metrics for the biannual recognition; (v) provide the document utilized to communicate/document safety recognition and associated metrics for downtimes/turnarounds; (vi) provide all Safety recognition documents/policies/procedures for any and *ALL* Safety recognition programs at the BTCX and that were active prior to the company issuing its midterm proposal; and (vii) provide the Fuels South Downtime Safety recognition plan (Jt. Exh. 11(aa)).[45]

Here, Respondent informed the Union that the above information was not relevant to the change to the SWPT recognition program. Lopez informed the Union that its attempt to expand the bargaining process is not warranted. Therefore, Lopez implied that the information is not relevant. Regardless of the proposed change, the Union is entitled to this information as this information concerns unit employees, and the requested information need only be reasonably related. Thus, Respondent violated the Act as alleged.

(22) On November 25, 2020, the Union requested information about the safety recognition program as related to first responders and fire team employees. On December 1, 2020, Respondent refused to provide the information. Specifically, the Union requested (i) the names of all USW Represented Firefighters/Medics/Rescue/HAZMAT team members and the gift cards provided to them from January 1, 2015 until current including the dollar amount of each card and the date in which it was made available to the employee; (ii) provide any documents/policies/procedures/communications that speak to document and/or explain how this gift card program works for that of the Firefighters/Medics/Rescue/HAZMAT team members; (iii) if the company is not including this group of Firefighters/Medics/Rescue/HAZMAT of folks and these gift cards as part of its ALL statement please respond accordingly and the only information required would be the document/policy/procedure/communication for gift card program for Firefighters/Medics/Rescue/HAZMAT team members; and (iv) if the company does not include this group of Firefighters/Medics/Rescue/HAZMAT folks all of the information listed above is required (Jt. Exh. 11(bb)).[46]

Here, Respondent informed the Union that the above information was not relevant to the change to the SWPT recognition program. Lopez informed the Union that its attempt to expand the bargaining process is not warranted. Therefore, Lopez implied that the information is not relevant. Regardless of the proposed change, the Union is entitled to this information as this information concerns unit employees, and the requested information need only be reasonably related. Thus, Respondent violated the Act as alleged.

(23) On December 2, 2020, the Union requested more information about the safety recognition program, but Respondent did not respond or provide the requested

[45] Complaint par. 11(aa).
[46] Complaint par. 11(bb).

information. Specifically, the Union requested (i) provide what ALL refers to in this email from Ivey [Mitchell's July 13 email]; (ii) is it the companies [sic] proposal that the biannual recognition is still active; (iii) as well as the turnaround recognition and the milestones for that of no recordables for consecutive years still active; (iv) does the ALL statement also include the Fire Team gas card; and (v) please also explain what is meant by the word hold ALL financial recognition associated with SWPT program (Jt. Exh. 11(cc)).[47]

Here, after Respondent informed the Union on December 1, 2020, that the recognition program for SWPT would end on December 4, 2020, the Union submitted the above information request. By this time, the Union had not sent Respondent any counter proposals despite numerous bargaining sessions and information received about Respondent's proposal. This information request was purely tactical and submitted for the purposes of delay. ACF Industries, LLC, 347 NLRB 1040, 1043 (2006). Thus, Respondent did not violate the Act as alleged, and this allegation is dismissed.

(24) On December 3, 2020, the Union requested information about the perfect attendance program for the Chemicals bargaining unit, but Respondent did not respond or provide the requested information. Specifically, the Union requested from January 1, 2015 until current, the total Perfect Attendance recognitions received by Chemicals USW Represented employees to include the Lab and the Chemical Plant (Jt. Exh. 11(dd)).[48]

Again, like the Union's actions with the last-minute information request concerning the elimination of the SWPT recognition awards, the Union submitted a last-minute information request concerning the PAP elimination. However, more egregiously, the Union had been informed of the PAP elimination in February 2020 and requested to bargain and stated that an information request would be submitted. However, the Union did not submit any information requests until December 3, 2020, one day before elimination of the PAP and two days after being informed by Lopez that the PAP would end. This information request was designed to delay the implementation of the change. Id. Thus, Respondent did not violate the Act as alleged, and this allegation is dismissed.

(25) On December 4, 2020, the Union requested an employee's termination information by December 18, 2020, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) [an employee's] pay records, to include pay codes, dates, hours and shift from January 1, 2019, until current; and (ii) all other USW terminations from January 1, 2015 until current for that of exhaustion of disability benefits. This is to include employees' name, date of termination from exhaustion of disability benefits, and the unit or area they worked in (Jt. Exh. 11(ee)).[49]

[47] Complaint par. 11(cc).
[48] Complaint par. 11(dd).
[49] Complaint par. 11(ee).

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(26) On December 4, 2020, the Union requested the same terminated employee's personnel and medical records by December 18, 2020,[50] but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) copies of the contents of [an employee's] personnel file, to include but not limited to disciplinary contacts, performance evaluations, attendance records, positive discipline logs and any other notes, memos or documentation that relate to [the employee's] employment with the company. If the company or its supervisors maintain employment records or documentation relating to [the employee's] employment in any other place in addition to [the employee's] personnel file, this request is intended to cover those sources as well; and (ii) the medical file for [the employee] (Jt. Exh. 11(ff)).[51]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(27) On or around December 4, 2020, Brooks verbally requested information about the slider records, but Respondent did not respond to or provide this requested information. Specifically, the Union requested the position/post/role/job for each of the slider codes that are documented in the payroll records Respondent provided in response to a prior information request (Jt. Exh. 11(gg)).[52]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(28) On December 8, 2020, the Union requested discipline performance evaluation by January 11, 2021, but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) all discipline and discipline documentation, including coaching and counseling, oral reminders, written reminders, DMLs, and terminations, issued to USW represented employees from January 1, 2020 through September 30, 2020, per work area; and (ii) the number of "needs improvement" as well as "unsatisfactory" PACDs for USW represented employees from January 1, 2020 through September 30, 2020, per work area (Jt. Exh. 11(hh)).[53]

[50] The Union appears to have mistakenly included a different employee's name at the first sentence of the information request, but the remainder of the request includes the correct employee's name.
[51] Complaint par. 11(ff).
[52] Complaint par. 11(gg).
[53] Complaint par. 11(hh).

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(29) On December 10, 2020, the Union requested medical records and personnel files for an employee by December 28, 2020,[54] but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) copies of the contents of [an employee's] personnel file, to include but not limited to disciplinary contacts, performance evaluations, attendance records, positive discipline logs and any other notes, memos or documentation that relate to [the employee's] employment with the company. If the company or its supervisors maintain employment records or documentation relating to [the employee's] employment in any other place in addition to [the employee's] personnel file, this request is intended to cover those sources as well; and (ii) the medical file for [the employee] (Jt. Exh. 11(ii)).[55]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(30) On December 21, 2020, the Union requested an employee's termination information by January 15, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) [an employee's] pay records, to include pay codes, dates, hours and shift from January 1, 2019, until current; and (ii) all other USW terminations from January 1, 2015 until current for that of exhaustion of disability benefits. This is to include employees' name, date of termination from exhaustion of disability benefits, and the unit or area they worked in (Jt. Exh. 11(jj)).[56]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(31) On December 29, 2020, the Union requested an employee's pay information by January 13, 2021, but Respondent did not respond to or provide this requested information. Specifically, the Union requested: all of [an employee's] pay records to include date, shift, and pay codes from January 1, 2020, through December 31, 2020 (Jt. Exh. 11(kk)).[57]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

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[54] The Union appears to have mistakenly included a different employee's name at the first sentence of the information request, but the remainder of the request includes the correct employee's name.

[55] Complaint par. 11(ii).

[56] Complaint par. 11(jj).

[57] Complaint par. 11(kk).

(32) On January 8, 2021, the Union requested discipline performance evaluation by January 22, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) all discipline and discipline documentation, including coaching and counseling, oral reminders, written reminders, DMLs, and terminations, issued to USW represented employees from October 1, 2020 through December 31, 2020, per work area; and (ii) the number of "needs improvement" as well as "unsatisfactory" PACDs for USW represented employees from October 1, 2020 through December 31, 2020, per work area (Jt. Exh. 11(ll)).[58]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(33) On January 18, 2021, the Union requested information about an employee by February 1, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) pay records for [an employee] from January 1, 2020, until current. This is to include hours, dates, pay codes and post assignments for each of the workdays or days in which [the employee] was at work. All badge data records for [the employee] for the same time; and (ii) post-training records for [the employee], including all posts/jobs in which [the employee] is qualified on as well as all posts/jobs that [the employee] is currently training on (Jt. Exh. 11(mm)).[59]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(34) On January 25, 2021, the Union requested information on the raw material coordinator by February 8, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested the names of all USW represented employees who are working/assigned to or have been assigned to and/or trained on Raw Material Coordinator job/post/role. Provide the job description; if it is different by area provide each area. Provide all payroll records associated with all USW representing employees who work/train on this job from January 1, 2015, until current (Jt. Exh. 11(nn)).[60]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(35) On January 25, 2021, the Union requested information about an employee's pay by February 8, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested [an employee's] payroll records from

[58] Complaint par. 11(ll).
[59] Complaint par. 11(mm).
[60] Complaint par. 11(nn).

January 1, 2020, until current as well as [a second employee's] payroll records from the same time period. The records are to include name, date, shift, ERN code, CPR code, and number of hours (Jt. Exh. 11(oo)).[61]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(36) On January 25, 2021, the Union requested Parago system information by February 8, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested provide all Parago system entries for any and all USW represented employees from the date Parago system became active until current (Jt. Exh. 11(pp)).[62]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(37) On January 25, 2021, the Union requested specialist rate information by February 8, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested any and all payroll data from any and all USW represented employees that are or have received that of specialist rate, from January 1, 2015, until current. This is to include name of employee, shift pay code, hours and date (Jt. Exh. 11(qq).[63]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(38) On February 1, 2021, the Union requested medical records for an employee by February 15, 2021, and Respondent provided the information on July 2, 2021. Specifically, the Union requested the medical file for [an employee] (Jt. Exh. 11(rr)). On June 17, 2021, Ford emailed Ayala to ask the Union to re-send this information request as he could not find the original request. The General Counsel alleges that Respondent unreasonably delayed providing this information to the Union.[64]

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned an employee's medical records. Four months after the initial request, Ford then asked for the Union to resend the request, and still waited two more weeks to provide this information. The Union appears to be requesting information readily available to Respondent. Thus, Respondent acted unreasonably when delaying providing this information, and Respondent violated the Act as alleged.

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[61] Complaint par. 11(oo).
[62] Complaint par. 11(pp).
[63] Complaint par. 11(qq).
[64] Complaint par. 11(rr), 11(ss), and 12(nn).

(39) On February 12, 2021, the Union requested payroll and job position information by February 25, 2021, to file grievances on behalf of two employee, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) payroll records for [four employees] from January 1, 2021, until current; and (ii) what role/job/position [two employees] are performing at CLEUs (Jt. Exh. 11(tt)).[65]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

On February 19, 2021, the Union sent an email to Ford regarding the outstanding information requests from July 21, 2020, through February 15, 2021. Ayala informed Ford that the Union would give Respondent until March 1, 2021, to provide the outstanding information (Jt. Exh. 11(uu)).

(40) On March 19, 2021, the Union requested 2020 holiday swap pay information by April 2, 2021, but Respondent did not respond to or provide this requested information. Specifically, the Union requested all USW represented employees who did not receive 10 holiday bonuses for fiscal years 2014, 2015, 2016, 2017, 2018, 2019, and 2020 (Jt. Exh. 11 (Jt. Exh. 11(vv)).[66]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(41) On March 25, 2021, the Union requested an employee's harassment investigation by April 4, 2021, but Respondent did not respond to or provide this requested information. Specifically, the Union requested the complete and entire harassment investigation for [an employee], including all witness statements, names of investigators, names of interviewees, dates interviews were conducted, date investigation began and date investigation was concluded, date the company notified [the employee] the investigation was complete, notes taken by investigators if the notes were utilized in determining the investigation's outcome, pictures, videos, audio recordings, call logs collected during and/or produced during the investigation, and any and all emails, instant messages, social media posts collected during the investigation, and the investigation summary (Jt. Exh. 11(ww)).[67]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

[65] Complaint par. 11(tt).
[66] Complaint par. 11(vv).
[67] Complaint par. 11(ww).

On March 29, 2021, the Union sent an email to Ford with the outstanding information requests from April 21, 2020, through February 12, 2021. Ford responded by indicating that Respondent had already sent one of the outstanding information requests, and that he would call Ayala (Jt. Exh. 11(xx)).

(42) On April 6, 2021, the Union requested the quarterly performance reviews and discipline evaluations by April 20, 2021, and reminded Ford that the Union had not received last year's information on the same subject, but Respondent did not respond to or provide this requested information. Specifically, the Union requested (i) all discipline and discipline documentation, including coaching and counseling, oral reminders, written reminders, DMLs, and terminations, issued to USW represented employees from January 1, 2021 through March 31, 2021, per work area; and (ii) the number of "needs improvement" as well as "unsatisfactory" PACDs for USW represented employees from January 1, 2021 through March 31, 2021, per work area (Jt. Exh. 11(yy)).[68]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(43) On April 16, 2021, the Union requested an employee's investigation file by April 30, 2021, but Respondent did not respond to or provide this requested information. Specifically, the Union requested the complete and entire inappropriate behavior investigation for [an employee], including the date the company was informed of an issue and in which it launched the investigation, who provided to HR the allegation of inappropriate behavior, all witness statements, names of investigators, names of interviewees, dates interviews were conducted, date investigation began and date investigation was concluded, notes taken by investigators if the notes were utilized in determining the investigation's outcome, pictures, videos, audio recordings, call logs collected during and or produced during the investigation, any and all emails, instant messages, social media posts, and text messages collected during the investigation, and the investigation summary. If the Company claims that the [employee's] inappropriate behavior investigation is different from the investigation which the company interviewed the employee and others, this request is for the same requests laid out above for the investigation in which it called [the employee] via phone on or about March 17, 2021 and communicated to the Union this investigation was regarding issues with some text messages sent to employees at NWC (Jt. Exh. 11(zz)).[69]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(44) On April 23, 2021, the Union requested medical records for the same employee whose investigatory file was requested on April 16, 2021, by May 14, 2021, and

[68] Complaint par. 11(yy).
[69] Complaint par. 11(zz).

Respondent did not provide this requested information. Specifically, the Union requested the medical file for [an employee] (Jt. Exh. 11(aaa)).[70]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(45) On April 26, 2021, the Union requested an employee's discipline information by May 8, 2021. Respondent provided this information on October 7, 2021. Specifically, the Union requested a copy of the discipline letter issue to [an employee] (Jt. Exh. 11(bbb) and (ccc)). The General Counsel alleged that Respondent unreasonably delayed in furnishing the information to the Union.[71]

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned employee discipline. The Union appears to be requesting information readily available to Respondent since the action was initiated by Respondent. However, Respondent waited 6 months to provide this information to the Union. Thus, Respondent acted unreasonably when delaying providing this information, and Respondent violated the Act as alleged.

(46) On May 4, 2021, the Union requested Northwest Chemical task book information by May 18, 2021, but Respondent did not respond to or provide this information. Specifically, the Union requested Northwest Chemical task book sign off sheets from January 1, 2016, until current (Jt. Exh. 11(ddd)).[72]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(47) On May 7, 2021, the Union requested information on wage employees. On May 14, 2021, Ford responded to the request. Specifically, the Union requested (i) whether the Company is going to have follow-ups with the CLEUS technicians; (ii) any investigation notes or records that [a supervisor] or the Department Head filed or produced; (iii) are there any plans to correct the issues at CLEUs?; and (iv) are there any timelines set for completion of the items identified at CLEUs? (Jt. Exh. 11(eee)).[73] The General Counsel alleges that Respondent did not provide the requested information.

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

[70] Complaint par. 11(aaa).
[71] Complaint par. 11(bbb), (ccc), and 12(uu).
[72] Complaint par. 11(ddd).
[73] Complaint par. 11(eee).

(48) On May 11, 2021, the Union requested information about an employee's disciplinary action, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) the total revenue loss in which [an employee] was disciplined; (ii) the mechanical barrier card/form/document that was turned in to the company; (iii) the rules and or procedures that direct technicians on ample communication to FLS/STL on job status and or delay; (iv) the discipline issued to all USW represented employees from January 1, 2016 until current in which the Company stated that they caused a business revenue loss on mechanical barriers; (v) all mechanical barrier cards/forms/documents in the companies' possession at the time of this request; (vi) the total cost per year, 2016 through current, that the company has calculated on business revenue loss due to delays on Mechanical barriers; and (vii) the expiration time for that of mechanical barrier cards/forms/documents 30 days from receipt or 90 days from receipt before discarding them (Jt. Exh. 11(fff)).[74]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(49) On May 11, 2021, the Union requested information about a study conducted by Respondent, and Respondent provided this information on July 12, 2021. Specifically, the Union requested the Determining Emergency Response Requirement (DERR) study that was conducted on April 14-15, 2021. This is to include but not limited to the DERR analysis introduction, DERR analysis attendees, DERR design principles, DERR boundary conditions, DERR analysis, DERR summary, DERR design principles, equipment/facility modification requirements, equipment/facility modification considerations, and all emergency events/scenarios covered or addressed in the DERR (Jt. Exh. 11(ggg)). The General Counsel alleges that Respondent unreasonably delayed in providing this information to the Union.[75]

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned a study completed by Respondent. The Union appears to be requesting information readily available to Respondent. However, Respondent waited 2 months to provide this information to the Union. Thus, Respondent acted unreasonably when delaying providing this information, and Respondent violated the Act as alleged.

(50) On May 13, 2021, the Union requested an employee's disciplinary information by May 27, 2021, and Respondent did not respond to or provide this information. Specifically, the Union requested (i) all impacts generated at LECC for that of lube oil overfilling incidents from January 1, 2016 until current; (ii) all discipline issued to USW represented employees due to the alleged lube oil overfilling; (iii) all of the verbal/oral/ coaching and counseling documents for alleged overfilling of lube oil reservoirs for all USW represented employees at LECC; and (iv) any and all verbal/oral/coaching and

[74] Complaint par. 11(fff)

[75] Complaint par. 11(ggg), (hhh), and 12(yy).

counseling issued to [an employee] for alleged lube oil reservoir overfills (Jt. Exh. 11(iii)).[76]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(51) On May 21, 2021, the Union requested information regarding interference with Union business by June 7, 2021, and Respondent did not respond to or provide this information. Specifically, the Union requested (i) the complete manpower sheet for BOSS for May 21, 2021; (ii) all overtime for all scale technicians from January 2, 2020, until current date. This is to include name, date, hours and shift; and (iii) A list of all qualified scale technicians from January 1, 2020, until current (Jt. Exh. 11(jjj)).[77]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(52) On June 7, 2021, Brooks, via email to Lopez requested an employee's pay information by June 21, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) manpower sheets for HDS from April 20, 2021; (ii) the Fire Training meeting invite sent to Mike Coker; (iii) Lenel badge data for [an employee] April 19, 2021 through April 21, 2021; and (iv) payroll records for [the employee] to include date, name shift, ERN codes, CRF codes for April 19, 2021 and April 20, 2021 (Jt. Exh. 11(kkk)).[78]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(53) On June 7, 2021, the Union requested employee information for a grievance by June 21, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested the revised D&A supervisor's check list, the date this was revised, and all communications to the Union regarding such changes/revisions (Jt. Exh. 11(lll)).[79]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(54) On June 8, 2021, the Union requested seniority lists by June 22, 2021, but Respondent did not respond to or provide the requested information. Specifically, the

[76] Complaint par. 11(iii).
[77] Complaint par. 11(jjj).
[78] Complaint par. 11(kkk).
[79] Complaint par. 11(lll).

Union requested a copy of the Refinery and Chemical Plant, Process and Mechanical and Technical Seniority List, broken down as Process and Mechanical for both contracts with Technical separate (Jt. Exh. 11(mmm)).[80]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

On June 10, 2021, the Union sent Ford a list of outstanding information requests from January 8, 2021, through May 17, 2021. Ayala informed Ford that the Union expected to receive the outstanding information by June 18, 2021. Ford did not respond to this message (Jt. Exh. 11(nnn)).

(55) On June 10, 2021, the Union requested an employee's disciplinary information for a grievance by June 24, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) the complete [employee] investigation, including the date the investigation began and concluded, the names of the investigators and titles, copies of all witness statements taken, any and all procedures, policies, checklist, sign-off sheets, work plans, permits, drawings, PIDs utilized and/or produced during the investigation, and the investigation summary; and (ii) all discipline issued to USW represented employees from January 1, 2016 until current for the same or similar allegations that the company made against [the employee] (Jt. Exh. 11(ooo)).[81]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(56) On June 15, 2021, the Union requested information about the 2021 proposed changes to the permitting system by July 7, 2021, and Respondent provided this information on August 3, 2021. Specifically, the Union requested (i) the 3 Union appointed employees names who were assigned to the team to change the permitting process and or system; (ii) the dates and times these employees met with the company regarding the proposed changes; (iii) the name of the team these employees participated in or on; (iv) the date the Company notified the Union of changes to the Permitting system. Also provide the communication if it was documented; (v) the date the Company is planning to begin training USW represented employees on these proposed midterm changes; (vi) how and or why asbestos removal became an acceptable WAL job/task; (vii) define dirty, fouling, phase changes service; (viii) how does the permit system govern and or make the business line install approved bleeder valves and seal weld them? If the business line decides not to take this action what are the actions required by the Process operator assigned the task of returning the equipment to service?; (ix) why is the company proposing that a job can be classified as EOLSW even if a standby is required, and what risk assessment if any have been done on breathing air work and entry work that may now be considered EOLSW under this proposed change; (x) what

[80] Complaint par. 11(mmm).

[81] Complaint par. 11(ooo).

heads can be removed without the exchanger being blinded? Is the proposal that if an exchanger is in a dirty, fouling, phase changing service it can be beheaded without being blinded? Or is it that deheaded exchangers in dirty, fouling, phase change service must be deheaded while utilizing RPE/breathing air? and (xi) the Baytown Complex (BTCX) Operator Tasks, the date this list was assembled, and any revisions of the documented list of tasks (Jt. Exh. 11(ppp)). The General Counsel alleges that Respondent unreasonably delayed in providing this information to the Union.[82]

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned unit employees. Although a one-month delay does not seem to be unreasonable, Respondent provided no justification for why the information could not be provided to the Union by the date requested. Thus, since the burden of proof falls to Respondent to prove that the information could not be provided sooner, Respondent violated the Act as alleged.

(57) On June 18, 2021, the Union requested med cert information, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) a list of all USW represented employees who were recently within the past 3 months placed on Med Cert; (ii) all notifications sent to USW represented employees that they are being placed on Med Cert; and (iii) if not provided in the above, the dates of the occurrences for each USW represented employee (Jt. Exh. 11(rrr)).[83]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(58) On July 1, 2021, the Union requested discipline performance evaluation information by July 16, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) all discipline and discipline documentation, including coaching and counseling, oral reminders, written reminders, DMLs, and terminations, issued to USW represented employees from April 1, 2021 through June 30, 2021, per work area; and (ii) the number of "need improvement" as well as "unsatisfactory" PACDs for USW represented employees from April 1, 2021 through June 30, 2021, per work area (Jt. Exh. 11(sss)).[84]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(59) On July 1, 2021, the Union requested pay records for two employees by July 16, 2021, but Respondent did not respond to or provide the requested information.

[82] Complaint par. 11(ppp), (qqq) and 12(fff).
[83] Complaint par. 11(rrr).
[84] Complaint par. 11(sss).

Specifically, the Union requested for [two employees] from May 30, 2021, through June 26, 2021 (Jt. Exh. 11(ttt)).[85]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(60) On July 1, 2021, the Union requested an employee's drug test results, medical records, and personnel file by July 16, 2021, but Respondent did not respond to or provide the requested information until June 6, 2022, with the drug test results and the termination letter. Specifically, the Union requested (i) copies of [an employee's] drug test results; (ii) the medical file for [the employee]; and (iii) copies of the contents of [the employee's] personnel file, to include but not limited to disciplinary contacts, performance evaluations, attendance records, positive discipline logs and any other notes, memos or documentation that relate to [the employee's] employment with the company. If the company or its supervisors maintain employment records or documentation relating to [the employee's] employment in any other place in addition to [the employee's] personnel file, this request is intended to cover those sources as well (Jt. Exh. 11(uuu)).[86]

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned an employee termination. The Union appears to be requesting information readily available to Respondent since the action was initiated by Respondent. However, Respondent waited almost one year to provide this information to the Union. Thus, Respondent acted unreasonably when delaying providing this information, and Respondent violated the Act as alleged.

(61) On July 1, 2021, the Union requested an employee's termination information by July 16, 2021, and Respondent provided this information on May 16, 2022. Specifically, the Union requested (i) the entire harassment investigation for [an employee], including all witness statements, audio recordings, video recordings, emails, instant messages, phone records collected or produced during the investigation; (ii) the names of the investigators and dates the investigation began and concluded; (iii) the names of the decision maker/s who decided to terminate [the employee]; and (iv) the company's 2010 proposal seeking to add harassment policy to schedule C (Jt. Exh. 11(vvv)).[87] The General Counsel alleges that Respondent unreasonably delayed in furnishing the Union with this information.

Respondent is obligated to respond to this information request in timely manner and failed to do so. The requested information concerned an employee termination. The Union appears to be requesting information readily available to Respondent since the action was initiated by Respondent. However, Respondent waited almost one year to provide this

[85] Complaint par. 11(ttt).
[86] Complaint par. 11(uuu).
[87] Complaint par. 11(vvv).

information to the Union. Thus, Respondent acted unreasonably when delaying providing this information, and Respondent violated the Act as alleged.

On July 8, 2021, the Union sent another email to Ford with a list of outstanding information requests from January 7, 2020, through July 1, 2020. Ford did not reply to this email (Jt. Exh. 11(www)).

(62) On July 13, 2021, the Union requested an employee's disciplinary information by July 28, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) the complete investigation that the company conducted to allege [an employee's] air door verification was less than adequate. This is to include all witness statements, all photos, voice recordings, videos, e-mail, instant messages, and social media post gathered during or produced during the investigation; and (ii) the date the investigation began, and the date included, the names of the investigators, and all procedures and policies the investigators utilized to render its discipline decision (Jt. Exh. 11(xxx)).[88]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(63) On July 13, 2021, the Union requested information for grievances to be filed on behalf of two employees by July 28, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) the CLEU's manpower sheets for July 1, 2021, through July 12, 2021; and (ii) the payroll records for CLEU's for all wage employees from July 1, 2021, through July 12, 2021. This is to include name, date, shift, ERN code, CFR code and total hours (Jt. Exh. 11(yyy)).[89]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

On July 29, 2021, the Union sent Ford another email with an outstanding list of information requests from May 14, 2019, through July 13, 2021. Ford did not respond to this email (Jt. Exh. 11(zzz)).

(64) On August 5, 2021, the Union sent Respondent an information request regarding permitting. Although Respondent provided some information, Respondent did not provide all the requested information. Specially, the Union requested: (i) all of the Competent Planner's Network meeting dates, any and all meeting minutes of the Competent Planner's Network meetings, and dates the Competent Planners Network meetings were cancelled or not conducted, as well as the charter and or document procedure/policy for the Competent Planners Network that lays out how this group makes changes to the permit system; and (ii) what heads can be removed without the

[88] Complaint par. 11(xxx).
[89] Complaint par. 11(yyy).

exchanger being blinded? Is the proposal that if an exchanger isn't a dirty, fouling, phase changing service it can be deheaded without being blinded? Or is it that deheading exchangers and dirty, fouling, phase change service must be deheaded while utilizing RPE/breathing air? (Jt. Exh. 11(aaaa)).[90]

Respondent is obligated to respond to this information request completely. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(65) On August 31, 2021, the Union requested information about proposed permit changes, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) the 2019 T1BP Health Check conducted at the Baytown Complex; and (ii) the 2020 API audit (Jt. Exh. 11(bbbb)).[91]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(66) On September 2, 2021, the Union requested permitting/operator task information by September 16, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested (i) by Unit/Control Center, all of the Level 2 Operator Task. This is to include any of the task in which are on the proposed list that the Unit is proposing as well as any task that will be considered EOLSW and the Unit is proposing doing and finally any tasks that have been submitted and reviewed approved by OIMS 6.2 Administrator to be added to the proposed approved list. Also include the hazard classes' both material and physical of each task, the name of the actual process material/s that was or is contained in the equipment as well as the approximate footage if above grade for each task; (ii) by Unit/Control Center, all Form A's that were in place and active prior to the proposed change; (iii) by Unit/Control Center, all Form A's that were generated after the Company unilaterally implemented this midterm change; (iv) by Unit/Control Center, the entire training record for IWP tasks prior to this proposed change, including but not limited to all classroom training materials/computer-based training materials/hands on training/testing/actual test date of training/ frequency of refresher training/name of trainer/trainers position in the company/validation of competency; (v) by Unit/Control Center the entire training record for Operator Task 2 tasks after this proposed change, including but not limited to all classroom training materials/computer-based training materials/hands on training/testing/actual test date of training/ frequency of refresher training/name of trainer/trainers position in the company/validation of competency; (vi) by Unit/Control Center, the entire training record for EOLSW task before this proposed change, including but not limited to all classroom training materials/computer-based training materials/hands on training/testing/actual test date of training/ frequency of refresher training/name of trainer/trainers position in the company/validation of competency; (vii) by Unit/Control Center, the entire training record for EOLSW task after this proposed

[90] Complaint par. 11(aaaa).
[91] Complaint par. 11(bbbb).

change, including but not limited to all classroom training materials/computer-based training materials/hands on training/testing/actual test date of training/ frequency of refresher training/name of trainer/trainers position in the company/validation of competency; (viii) why Operator 2 Tasks do not have to conform to the Company's entire service and maintenance lock out/tag out procedure; (ix) the Company's definition of "not highly skilled mechanically"; (x) the Company's definition of "low priority"; (xi) the Company's understanding/interpretation of "shall be of the nature that they can be stopped on short notice or completed to allow Process Technicians to carry out their operating responsibilities"; (xii) the evaluation of each task in the proposed Operator Task 2 tasks conducted by the Units, who was involved in the evaluation, the date it was evaluated, and the standards or documents utilized during the evaluation; and (xiii) the evaluation of each EOLSW task proposed to be conducted by the Units, who was involved in the evaluation, the date was evaluated, and the standards and documents utilized during the evaluation (Jt. Exh. 11(cccc)).[92]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(67) On September 2, 2021, the Union requested information about Butyl employees by September 16, 2021, but Respondent did not respond to or provide the requested information. Specifically, the Union requested all discipline, including coaching and counseling, oral reminders, written reminders, DMLS, and terminations, issued at Butyl for all USW represented employees from August 31, 2020 through August 31, 2021. This is to include the actual documentation i.e., Coaching & Counseling, oral reminder, written reminder, DML, termination letter etc. (Jt. Exh. 11(dddd)).[93]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(68) On September 2, 2021, the Union requested two employees' payroll information by September 16, 2021, but Respondent did not provide the requested information. Specifically, the Union requested payroll records for [two employees] for dates August 1, 2021, through August 14, 2021. Those records shall include name, shift, date, ERN code, CRF code, and hours (Jt. Exh. 11(eeee)).[94]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(69) On July 12, 2021, the Union requested performance review information for negotiations, but Respondent did not respond to or provide the requested information.

[92] Complaint par. 11(cccc).
[93] Complaint par. 11(dddd).
[94] Complaint par. 11(eeee).

Specifically, the Union requested (i) the comprehensive procedure for the new performance reviews, to include how and who is giving input, how the input is taken in, how the input is validated if not from the supervisor (referring to a peer-to-peer elements); and (ii) what competencies the company combined to make the mid-term proposal regarding performance reviews (Jt. Exh. 11(ffff)).[95]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

(70) On July 13, 2021, the Union requested performance review information for negotiations, but Respondent did not respond to or provide the requested information. Specifically, the Union requested that Respondent verify the following information (i) the current performance review process has 11 categories/competencies; (ii) the company's midterm proposal to the performance review process has five categories/competencies; (iii) the company's midterm proposal to the review process combines LPS and Safety into one category/competency; (iv) Job knowledge and Skills remains the same in the company's midterm proposal to the review process; (v) in the Lab, Mechanical and Process items were removed from the company's midterm proposal to the review process; (vi) Troubleshooting and Problem Solving would become Decision Making and Problem Solving; (vii) Manage Risk was deleted entirely; (viii) Planning and Prioritizing, Show Initiative, and Applies Learning were combined to form Productivity; (ix) Communicates Effectively, Collaboration, and Dependability were combined to form capital Team Contribution; (x) "Exceeds Expectations" is currently six or more competencies whereas the midterm proposal has three or more competencies; (xi) "Meets Expectation" rating is determined with "No Unsatisfactory" ratings and no more than two "Needs Improvement" ratings whereas the midterm proposal's "Meets Expectations" is determined with no "Unsatisfactory" ratings and no more than one "Needs Improvement" rating; (xii) "Needs Improvement" rating is currently three or more competencies (not safety) or one "Unsatisfactory" rating (not safety) whereas the midterm proposal has two or more competencies (not safety) or one "Unsatisfactory" rating (not safety); and (xiii) "Unsatisfactory" rating is currently two or more competencies or rated "Needs Improvement" in four or more competencies or rated "Unsatisfactory" in Safety whereas the midterm proposal "Unsatisfactory" rating is two or more competencies or rated "Needs Improvement" in three or more competencies or rated "Unsatisfactory" in Safety (Jt. Exh. 11(gggg)).[96]

Respondent is obligated to respond to this information request and failed to do so. Since this information concerns unit employee information it is presumptively relevant. Respondent violated the Act as alleged.

[95] Complaint par. 11(ffff).
[96] Complaint par. 11(gggg).

The 8(a)(3) and (1) Allegations

L. Late 2020: Respondent Installs Lock on a Scale House Door; and December 2020 and January 2021: Respondent Denies Union President's Request for Leave

A Scale House Door is Locked

Brooks returned to work at the scale house on July 13, 2020. At the scale house, trucks are weighed with materials and this area is critical to Respondent's operations. The scale house contains three doors, and whether these doors were secured changed in December 2020. In July 2020, the security of the doors were as follows: a locked door which leads from inside the scale house to the scales, one unlocked door which leads from the locker room to outside the scale house but cannot be an internal entry point as there was no external door handle; and a third unsecured door which was the entry point for employees (Tr. 332, 337–338, 390–391). Many employees would access the scale house each day as the area could get busy with deliveries, scale tickets, truck driver deliveries, and contractors (Tr. 339–340). Employees such as Union Steward Baker would visit with Brooks in the scale house engaging in personal discussion with "back and forth conversations" concerning union business (Tr. 642–643).

On November 19, 2020, Refinery Specialties Process Department Head Sarah Jones (Jones) sent an email to all managers at the Baytown facility to move control centers back to lock down mode with approval required for entry due to "potential holiday travel and gathering" due to concerns about a COVID-19 surge (Tr. 376–377). Jones also instructed that all meetings move to video (R. Exh. 2; Tr. 390, 1102). Early in 2020, when COVID-19 first was identified, the control centers had been placed in lock down mode to reduce person-to-person interaction to prevent COVID-19 infections from spreading.

In either November or December 2020, after Jones sent her email instructions, BOSS supervisor Wendell Stanley (W. Stanley) and Brooks' second-line supervisor Martin Kaufman (Kaufman), Extractions BOSS Business Team Lead, decided to lock down the scale house, which is not a control center, by installing a keypad lock on the unsecured door (Tr. 337–338, 374, 896, 1103). Kaufman testified that a lock was placed on the door to minimize traffic in the area and denied Union activity factoring into the decision to install the lock on the door (Tr. 1104–1105). Ford testified that although the scale house is not a control center, it is still a critical function of Respondent because if the scale house is shut down due to COVID-19 infections, then the trucks cannot move in and out of the facility (Tr. 893–894). Even after the COVID-19 lockdown was lifted, Kaufman decided to keep the lock on the door because this door previously was unsecure to the interior of the facility, and he believed unauthorized entry could occur (Tr. 675, 1105).

Thereafter, when Brooks arrived at work one day, he discovered the door had been locked and he could not access his work location (Tr. 338–339, 341, 376, 396). Brooks contacted his first-line supervisor Robert Stahl (Stahl), and Stahl gave him the code (Tr. 339, 385, 1104). Stahl did not tell Brooks he could not share the code with other employees or not engage in Union business during work hours (Tr. 386).

On December 8, 2020, W. Stanley sent Brooks an email stating, "Wanted to ensure you are aware of the current COVID-19 protocol. Only unit assigned (BOSS) personal [sic] should be inside the Asphalt scale building. Been a couple of times now that I have been down at the scales and there has been visitors from other areas of the plant not assigned to BOSS. Wanted to make sure you had the most up to date information" (R. Exh. 2). The next day, W. Stanley clarified for Brooks that only assigned BOSS personnel should be in the scale house as COVID-19 restrictions increased, and to phone rather than have in-person contact (Tr. 379; R. Exh. 2).

On cross-examination, Brooks testified that Ford told him there were "people outside of BOSS that were coming over and, you know, possibly conducting union business" (Tr. 374). Then, Brooks testified, when asked to clarify, that Ford made a comment to him about conducting Union business at some time but not necessarily after the lock was installed (Tr. 374–375). Brooks' testimony is confusing and filled with assumptions as to what Ford intended by his comments (Tr. 375, 382–383).

Baker testified that after the lock was placed on the door, he was given the code and has been permitted access to the scale house, despite not working in the scale house (Tr. 643-644, 650, 653–654). Baker testified that a supervisor told him to limit his time at the scale house, speaking to Brooks (Tr. 645–647, 652). Baker could not recall if Union business was mentioned during this conversation and could not recall when this conversation occurred: before or after the scale house lock was installed (Tr. 646–648, 651). He has never been told he could not discuss Union business while on duty (Tr. 643, 649).

Brooks' Leave Requests

When Brooks returned to the scale house, Kaufman met with him on July 13, 2020, to discuss workplace expectations (Tr. 1092, 1112). Kaufman then sent an email memorializing the discussion (R. Exh. 3 and 4). Kaufman expected Brooks to request Union-related absences and vacation leave at least 3 weeks in advance, and to provide planned vacation for the year by July 31 (R. Exh. 4). The MOA states that Brooks when requesting unpaid time to conduct Union business should provide as much advance notice as practicable to his supervisor, and his supervisor should grant the request as practicable. As of July 15, 2020, Brooks had Union away time (UA) scheduled for July 14, 17, 20, and 21, 2020 as well as vacation scheduled (VR) for July 22 to 24, 2020 (R. Exh. 4). Brooks testified that he told Kaufman he would give reasonable notice, not specifically 3 weeks in advance (Tr. 411–413, 436–437).

When Brooks returned to work, only two qualified scale technician contract employees worked in the scale house. After his re-training, Brooks became the third qualified scale technician working in the scale house (Tr. 342). Brooks' schedule was from 7 a.m. to 3 p.m., Monday to Friday (Tr. 342–343). Respondent operated the scale house only during weekdays for 16-hours per day. The second shift was from 3 p.m. to 11 p.m. (Tr. 343). Brooks never worked a 16-hour shift (Tr. 354).

Once Brooks began working at the scale house, any requests for leave to conduct Union business would be conveyed to Ford and others, and Brooks would usually request leave a few weeks in advance (Tr. 336–337). Since July 2020, Brooks requested and received time off on dozens of occasions to conduct Union business and many of these requests were received and

approved less than 3 weeks in advance (Tr. 406, 425–427; R. Exh. 5 and 5a). For example, on September 21, 2020, Ford sent Ayala an email asking for Brooks' meetings and UA leave though October (R. Exh. 6). Ayala responded with multiple days off for UA along with notifying Ford that Brooks would need additional days to prepare for two arbitrations that month (R. Exh. 6). On September 29, 2020, Ayala sent another email to Ford regarding Brooks' UA dates for October and would send the week of October 26 as soon as the Union knew when Brooks needed UA time (R. Exh. 7). Brooks testified that he was not denied UA leave for these requested dates as he could recall (Tr. 430–433).

As relevant to these complaint allegations, on November 19, 2020, Ayala sent an email to Ford regarding Brooks' upcoming schedule (R. Exh. 8). Ayala noted that Brooks needed "releases" for December 8, 10 and 11, 2020 (R. Exh. 8). Ford forwarded Ayala's email to W. Stanley on November 30, 2020. W. Stanley wrote that Respondent had already approved vacation days for the contract employees on the dates requested by Brooks, and approving Brooks' time off requests would cause the "3rd qualified post tech to have to work a double" shift. W. Stanley wanted to avoid this problem, and asked if Brooks could work union business after 3 p.m. (R. Exh. 57). Ford responded that he could let the Union know and would ask Ayala if on one of the days requested, the Union could find someone else (R. Exh. 57).

On November 30, 2020, Ayala sent another email to Ford regarding Brooks' UA leave on December 3, 7, 8, 10, and 11, 2020. Ayala also noted that on December 17, 2020, Brooks would be attending an arbitration, and by December 8, 2020, she would know if he needed another UA day. Furthermore, Ayala noted that December 23 and 31, 2020, are "tentatively" vacation days, and December 28, 2020, another UA day (R. Exh. 9).

On November 30, 2020, W. Stanley asked employees to put in vacation requests for 2021 by December 15, 2020, to have the best chances of the vacation being "protected," and any requests thereafter Respondent would try to accommodate with sufficient notice. On December 23, 2020, W. Stanley sent an email to Brooks stating that he was the only one without 2021 vacation days noted, and that they would do their best to protect any vacation days he wanted (R. Exh. 10, 61). Brooks responded that he is the only scale house employee directly employed by Respondent and would not be competing with contract employees for time off. Brooks testified that Respondent would ask employees to "forecast" their leave during holiday periods such as for the month of December (Tr. 336–337).

On December 3, 2020, Kaufman denied Brooks UA and vacation leave requests for December 1, 2, 4, 7, 11, 21, 22, and 23, 2020, because he did not want to cause 16-hour shifts for the two contract employees or cancel their approved vacation leave (GC Exh. 37 and 39; Tr. 1093–1094).[97] Other days requested by Brooks for December 2020 were granted (GC Exh. 37). Kaufman explained that prior to Brooks returning to the scale house, the two contract employees had to work double shifts (Tr. 105, 1108). At times the contractor could provide a third contract employee for the area, but due to attrition the area did not always have three contract employees trained and available (Tr. 1107–1108).

[97] The General Counsel moved GC Exh. 38 into evidence, but the dates in that email string are from 2021, not 2020, which is the time period at issue.

Kaufman testified that Brooks was not treated differently from any other employee, and other employees would have been denied leave if a double shift were caused (Tr. 1094–1095). Kaufman denied Brooks' union activity had any role in Kaufman's decision to deny leave on those specific dates.

On December 3 and 4, 2020, Brooks protested the denial of UA leave, providing various rationales (GC Exh. 40; Tr. 347–348). Brooks was also denied UA leave for January 4 and 7, 2021, due to manpower issues (GC Exh. 41; Tr. 349–350).

Legal Analysis

The General Counsel alleges at complaint paragraph 7 that Respondent violated Section 8(a)(3) and (1) of the Act in mid-December 2020 when placing a lock on the door in the BOSS restricting Brooks' access to a work area.[98] The General Counsel also alleges at complaint paragraph 8 that Respondent violated Section 8(a)(3) and (1) of the Act when denying Brooks' request for union leave on December 7, 11, 15, 16, 17, 21, and 22, 2020, and January 4 and 7, 2021.

The Board applies the dual-motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), when examining whether an employer's adverse action against an employee is motivated by protected concerted or union activity. The General Counsel must first make an initial showing sufficient to support the inference that the employee's protected conduct was a motivating factor in the employer's decision. Id. at 1089. The elements to sustain the General Counsel's burden of proof are a showing of (1) union or other protected activity by the employee, (2) the employer's knowledge of that activity, (3) adverse employment action, and (4) animus against the union or other protected activity on the part of the employer. See e.g., *Intertape Polymer Corp.*, 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024). Animus may be proven by direct or circumstantial evidence. Id. Circumstantial evidence of discriminatory motive may include evidence of suspicious timing, false or shifting reasons provided for the adverse employment action, and/or disparate treatment. See *Volvo Group North America, LLC*, 370 NLRB No. 52, slip op. at 3 (2020). Further, the evidence must be sufficient to establish a causal relationship exists between the employee's protected activity and the employer's adverse action

[98] The complaint at paragraph 7 alleges that Respondent violated Sec. 8(a)(1) of the Act when placing "a lock on the door to the BOSS area restricting Union President Brooks access to a work area." However, in the posthearing brief, the General Counsel argues that Respondent violated Section 8(a)(3) and (1) of the Act when installing a lock on the scale house door as Respondent's actions were motivated by animus (GC Br. at 44–46). The General Counsel made no arguments to support an alleged 8(a)(1) violation. Respondent addressed complaint paragraph 7 as an alleged Section 8(a)(3) and (1) violation but also made an argument addressing any claim by the General Counsel that the installation of the lock qualified as a workplace rule violating Section 8(a)(1) of the Act (R. Br. at 62–68). Therefore, I have only considered whether the alleged conduct violated Section 8(a)(3) and (1) of the Act since the issue has been full litigated and Respondent understood the argument as to whether there was unlawful motive in installing the lock. See *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

against the employee. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 8 (2019). Once the General Counsel established that the employee's union activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. *Allied Mechanical*, 349 NLRB 1327, 1328 (2007).

Counsel for the General Counsel argues that Respondent's actions of locking one of the scale house doors as well as denying Brooks' leave in December 2020 and January 2021 were motivated by animus towards Brooks' union activity (GC Br. at 44–46). The Union argues similarly but adds that Respondent's animus towards Brooks is due to his high-volume grievance and information request filings (CP Br. at 26–29).

Respondent argues that the Company lawfully denied a small number of days of leave for Brooks due to business reasons. Respondent argues that in contrast Brooks had been granted many hours of leave in 2020 which supports their position that Brooks' union activity had not role in its decision. Further, Respondent argues that the installation of the lock on the scale house door is not an adverse employment action (R. Br. at 59–65).

To begin, it is obvious that Respondent was aware of Brooks' union activity. Brooks had been union president for many years, filing many grievances and information requests with Respondent. See, e.g., *Thor Power Tool Co.*, 148 NLRB 1379 (1964), enfd. 351 F.2d 584 (7th Cir. 1965).

Turning to the scale house door lock, the General Counsel has not first proven that Respondent took an adverse action against Brooks. In other words, the General Counsel must prove that Respondent caused an adverse effect on the terms and conditions of employment for one or more employees. *Newcor Bay City Division*, 351 NLRB 1034, 1037 (2007). Respondent placed a lock on the scale house door to decrease traffic in the area. Immediately, when Brooks came to work, Stahl provided Brooks the code for the lock and never told him that he could not share the code with any other employee. Brooks did, in fact, provide this code to employees, and employees such as Union steward Baker continued to visit him in the scale house. Thus, I would dismiss this allegation at complaint paragrap 7 on this basis. No adverse action was taken against Brooks, restricting his access or even other bargaining unit employees' access to the scale house. Cf. *Postal Service*, 308 NLRB 893 (1992) (employer discriminatorily restricted shop steward access to the facility); *Debbie Reynolds Hotel*, 332 NLRB 466 (2000) (employer unlawfully changed showroom and museum area locks one day after announcing layoffs and bargaining demand from union where change in locks intended to harass employees); and *K-Mart Corp.*, 255 NLRB (1981) (employer violated the Act when restricting employee access to phones and bulletin boards).

Even assuming that an adverse action was taken against Brooks and bargaining unit employees, the General Counsel cannot prove animus. While the timing of installing the lock after Brooks began working in the scale house may seem suspicious, Respondent did not preclude any bargaining unit employee contact with Brooks while he worked in the scale house. In early December 2020, W. Stanley explained that Respondent wanted to reduce COVID-19 transmission, and thus, wanted to reduce face-to-face interaction. W. Stanley advised Brooks to have phone conversations rather than in-person conversations. Respondent's actions in

installing a lock on the scale house door was not discriminatory, and thus complaint paragraph 7 is dismissed.

Turning to Respondent's denial of Brooks' leave on certain dates in December 2020 and January 2021, Respondent's action, unlike the door lock, is an adverse action. Brooks' leave was denied, depriving him of those days for personal leave as well as union activity. However, again animus has not been proven. Respondent denied Brooks leave on a select number of days due to prior leave requested by the contract employees, which would thereby cause a double-shift for another contract employee if Brooks was also granted leave. Prior to December 2020, Respondent had granted union and personal leave requested by Brooks on numerous occasions. Even in December 2020 and January 2021, Respondent granted UA and personal leave to Brooks. The General Counsel fails to show how these specific days of denial of leave is based on animus towards Brooks' union activity. Respondent consistently explained the basis for denial of leave, and asked Brooks if he could adjust his schedule to accommodate the pre-approved leave. Respondent's actions do not indicate any animus directed at Brook's union activity. Thus, complaint paragraph 8 is dismissed.

CONCLUSIONS OF LAW

1. Respondent, ExxonMobil Chemical Company, ExxonMobil Chemical Company (Lab), and ExxonMobil Fuels & Lubricants, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 13-2001 has been a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute an appropriate unit (Chem Plant) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Production and maintenance employees employed in the Baytown Chemical Plant facilities; excluding all other employees, office employees, clerical employees, guards, professionals, and supervisors as defined in the Act.

4. The following employees constitute an appropriate unit (Lab) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All technical employees employed at its Baytown Chemical Plant; excluding professional employees, guards, watchmen, and supervisors, as defined by the Act.

5. The following employees constitute an appropriate unit (Refinery) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Production and maintenance employees employed at its Baytown Refinery facilities; excluding all other employees, office employees, clerical employees, guards, professionals, and supervisors as defined in the Act.

6. Respondent failed to bargain in good faith and violated Section 8(a)(5) and (1) of the Act: by failing to provide the Union with an opportunity to bargain changes to the slider pay policy for the Lab bargaining unit employees which was unilaterally implemented on December 7, 2020; by failing to provide the Union with an opportunity to bargain changes to the PAC form which were unilaterally implemented on October 18, 2018, and September 15, 2021; and by refusing to provide or timely provide the Union with 67 requests for information submitted from May 14, 2019 to July 13, 2021.

7. These unfair labor practices found affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. All other complaint allegations are dismissed.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend the Board to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with an opportunity to bargain changes to the slider pay policy for the Lab bargaining unit employees which was unilaterally implemented on December 7, 2020 and by failing to provide the Union with an opportunity to bargain changes to the PAC form which were unilaterally implemented on October 18, 2018, and September 15, 2021, I recommend that, on request, Respondent bargain with the Union regarding these unilateral changes.

Specifically, having found that Respondent violated Section 8(a)(5) and (1) by failing and refusing or delaying providing the Union with certain relevant information requested between May 14, 2019, to July 13, 2021, I recommend Respondent provide the information to the Union. There were 67 requests for information as identified herein.

Respondent shall also post an appropriate information notice, as described in the attached Appendix. This notice shall be posted in the Respondent's ExxonMobil Chemical Company, ExxonMobil Chemical Company (Lab), and ExxonMobil Fuels & Lubricants, Baytown facility, wherever notices to employees are regularly posted, for 60 days, without anything covering the notice or defacing its contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, posted on an intranet or an internet site, and/or other using electronic means, to the extent Respondent customarily communicate with their employees in such a manner. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed their facility at ExxonMobil Chemical Company, ExxonMobil Chemical Company (Lab), and ExxonMobil Fuels & Lubricants, Baytown, Texas, 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 October 11, 2018.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[99]

ORDER

The Respondent, ExxonMobil Chemical Company, ExxonMobil Chemical Company (Lab), and ExxonMobil Fuels & Lubricants, and their officers, agents, and representatives, shall

1. Cease and desist from

(a) Unilaterally changing the Slider Pay Policy for the Lab bargaining unit employees without bargaining;

(b) Failing to provide the Union with notice and an opportunity to bargain changes to the Performance Assessment (PAC) form;

(c) Refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of Respondent's employees;

(d) Refusing to timely comply with the Union's request for information that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of Respondent's employees; and

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

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

(a) On request, rescind changes to the Slider Pay Policy as applicable to the Lab bargaining unit employees and bargain with the Union;

(b) On request, rescind changes to the PAC form and bargain with the Union;

(c) Promptly provide the Union with the 67 requests for information the Union requested from May 14, 2019, to July 13, 2021, as detailed in the findings of fact;

[99] 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.

(d) Within 14 days after service by the Region, post at its Baytown facility, copies of the attached notice marked "Appendix."[100] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by Respondent's authorized representatives, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical positing of paper notices, notices shall be distributed electronically, such as by email, posting on an internet or an intranet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, the Respondent has gone out of business or closed the office involved in this proceeding, 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 October 11, 2018.

(e) 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 that the Respondent has taken to comply.

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

Dated, Washington, D.C. June 11, 2025

Amita Baman Tracy
Administrative Law Judge

[100] If Respondent's facilities involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If Respondent's facilities involved in these proceedings is closed or not staffed by a substantial complement of employees due to the COVID-19 pandemic, the notice must be posted within 14 days after the office 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 employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 a representative 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 unilaterally change the Slider Pay Policy for the Lab bargaining unit employees without bargaining with the United Steel, Papery and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 13-2001 (the Union).

WE WILL NOT fail to provide the Union with notice and an opportunity to bargain changes to the Performance Assessment form.

WE WILL NOT fail and refuse to bargain collectively with the Union by failing and refusing or timely providing the Union 67 requests for information that is relevant and necessary to the performance of its functions as the collective-bargaining representative of our Chem Plant, Lab, and Refinery unit employees.

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

WE WILL on request, rescind changes to the Slider Pay Policy as applicable to the Lab bargaining unit employees and bargain with the Union.

WE WILL on request, rescind changes to the PAC form and bargain with the Union on request, rescind changes to the Slider Pay Policy as applicable to the Lab bargaining unit employees and bargain with the Union.

WE WILL furnish the Union with the 67 requests for information the Union submitted to us between May 14, 2019, to July 13, 2021.

EXXONMOBILE CHEMICAL COMPANY
EXXONMOBIL CHEMICAL COMPANY (LAB)
EXXONMOBIL FUESL & LUBRICANTS
(Employer)

Dated _____ 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 Region 16 Resident Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1919 Smith Street, Suite 1545
Houston, TX 77002-8051
T: (281) 228-5600, 8:00 a.m. – 4:30 p.m. CT

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/16-CA-229107 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.