UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC

DEERE & COMPANY d/b/a JOHN DEERE HARVESTER WORKS

and Case 25–CA–321689

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURE IMPLEMENT WORKERS OF AMERICA LOCAL UNION NUMBER 865

*Jacob Butcher, Esq.,*
for the General Counsel.
*Anthony B. Byergo, Esq., Kevin Zimmerman, Esq.,*
for the Respondent.
*Joseph Torres, Esq.*,
for the Charging Party.

# DECISION

## STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Peoria, Illinois, on September 12, 2024.[1] International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, Local 865 (the Union/Charging Party) filed charges in case 25–CA–321689 on July 13. (GC Exh. 1(a) to 1(f).)[2] The General Counsel issued the complaint and notice of hearing for case for case 25–CA–321689 on June 13, 2024. On June 27, 2024, Deere & Company d/b/a John Deere Harvester Works (the Respondent) filed a timely answer and affirmative defenses to the complaint denying all material allegations.

[1] All dates are in 2023, unless otherwise indicated.

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "CP Exh." for Charging Party's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel's brief; "R. Br." for Respondent's brief; and "CP Br." for Charging Party's brief.

The complaint alleges that since about June 29, including in writing on July 14, the Respondent has failed and refused to furnish the Union with all emails pertaining to the disciplinary action issued to bargaining unit employee Nick Toal (Toal), including the email from Production Supervisor Thomas Campen (Campen) to labor relations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following[3]

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent manufactures agricultural equipment, among other products, at facilities throughout the world. It is incorporated in Delaware and has its headquarters and place of business in East Moline, Illinois. During the 12-month period ending the relevant period, the Respondent, in conducting its business operations, purchased, and received at its Illinois facility goods valued at more than $50,000 directly from points outside the State of Illinois. The Respondent admits, and I find, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exhs. 1(c), 1(e).)

It is undisputed that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A. Overview of Respondent's Operation*

The Respondent manufactures agriculture equipment at, among other locations, its Harvester Works facility (HW facility) in East Moline, Illinois.[4] The HW facility is 1 of 12 plants where the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America (International Union) is

[3] My findings and conclusions are based on my review and consideration of the entire record not just those cited in this decision, and the demeanor of the witnesses. I have also considered the relevant factors in making my credibility findings which includes: "the weight of the respective evidence, established or admitted facts, inherent probabilities, and 'reasonable inferences that may be drawn from the record as a whole.'" See, e.g., *Daikichi Corp.*, 335 NLRB 622, 623 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 (9th Cir.), cert. denied 522 U.S. 948 (1997).

[4] I have taken judicial notice of Respondent's corporate mission as set forth on its website. See http://deere.com. F.R.E. 201(b); *Doron Precision Systems, Inc. v. FAAC, Inc*., 423 F.Supp. 2d 173, 179 fn.8 (S.D.N.Y. 2006) ("a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it's capable of accurate and ready determination.")

the exclusive collective-bargaining representative of a category of wage employees, totaling about eleven thousand represented employees. The International UAW authorizes the Union to represent, for specific purposes, approximately 1300 to 1400 bargaining unit wage employees at the HW facility. The HW facility also employs about 300 salaried employees.

Since June 2007, Kevin Zimmerman (Zimmerman) has worked in labor relations for the Respondent. Currently, he is the senior counsel and director of labor relations. In his role, Zimmerman advises the Respondent on enforcement of the CBA, represents the Respondent before various forums on labor matters, and serves on the Respondent's bargaining team during contract negotiations. During the relevant period, Brian Cox (Cox) was the Respondent's labor relations manager, Andrew Elias (Elias) was its labor relations representative, and Alexia Zatarain (Zatarain) was the labor relations administrator. Campen was a production supervisor for the Respondent.

### *B. Union Organization*

Although the Union filed the current charge on behalf of its members at the HW facility, the International Union is the exclusive collective-bargaining representative for production and maintenance employees at 12 of the Respondent's plants (including the HW plant) covering several Midwestern states. (Jt. Exh. 1.) The Union handles the daily matters for its members and initiates grievances. If a labor dispute ultimately goes to the Joint Appeals Board (arbitration), the International UAW handles the proceedings with assistance from the relevant local union's chairperson. The International UAW must consent to elevating a grievance to arbitration and retains authority to settle grievances under the CBA. Although the Union (and other locals) administers the CBA at the local level, the International UAW has authority over the negotiation and overall administration of the contract. Since July 2021, Robert Garland (Garland) has been the International UAW's assistant director of Agricultural Implement Department. He was on the Joint Appeals Board from about 2010 to 2015. Rhino Dotson (Dotson) is currently the Union's committeeman. Gary Abbott (Abbott) has been a union steward for 14 or 15 years and an alternate committeeman for Dotson for about 12 or 13 years. In his role as an alternate, Abbott handles grievances and disciplinary actions up to the step 2 grievance process. Abbott also appears at step 3 grievance hearings and disciplinary action hearings.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> The employees described in Article 1 of the collective-bargaining agreement effective from November 17, 2021 —November 1, 2027 between the Respondent and UAW and its various locals including the Union.

(GC Exhs. 1(c), 1(e); Jt. Exh. 1.) As noted above, the most recent collective-bargaining agreement between the International Union and the Respondent is effective from November 17, 2021 to November 1, 2027.

### *C. Establishment of Confidentiality Training*

In 2016, there were worries about the Respondent directly sharing with bargaining unit employees accounting bulletin data information. These reports were distributed annually but there were concerns that they contain confidential information. Consequently, the International UAW and the Respondent agreed to draft and execute a confidentiality agreement that the local union would sign when the Respondent provided them with accounting bulletins, any material containing proprietary information, and "other records intended to be subject to [the] agreement." (R. Exh. 4; GC Exh. 10.) The local unions signed the confidentiality agreement each time it requested and, or received confidential information from the Respondent.

Zimmerman gave undisputed testimony that the Respondent's desire to protect confidential information increased because of people's escalating use of cell phones with cameras. Therefore, in 2022 the Respondent approached the International UAW with a proposal to eliminate the practice of signing the confidentiality agreement on a case-by-case basis and instead require union officials to sign a blanket agreement to be used for all confidential information.[5] Zimmerman discussed with Garland methods for how the Respondent could handle local officials request for information. By email dated February 3, 2022, Zimmerman informed Garland, Scott DeVrieze, and Josh Hogan that he had drafted a blander confidentiality agreement to facilitate the smooth exchange of confidential information to the local unions in response to their information requests. He wrote in part,

> I would propose that all members of each shop committee sign such a blanket document with unit LR in order to be privy to confidential information, allow the Company to release information more easily and again respect the Company's right to protect confidential information.

(GC Exh. 9.) During a telephone call with Zimmerman Garland expressed his objection, noting that the blanket confidentiality agreement's broad definition of "confidential" would impinge on the rights of union officials to obtain even records that are not normally considered confidential but would be classified as such under

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[5] Zimmerman testified that its definition and processes for handling confidential information is set forth in various written policies. (R. Exhs. 1–3.; Tr. 156–160.) The Respondent's entire work force is subject to the policies requirements.

the broad sweep of the blanket agreement. Zimmerman assured Garland that would not be an issue because the Respondent understands that the Union is "entitled to many rights" but did not specify those rights.

Due to Garland's hesitation about agreeing to a blanket confidentiality agreement, Zimmerman suggested that union officials instead take an online confidentiality training course. (GC Exh. 12.) On April 6, 2022, Zimmerman emailed Garland and Union Officials Scott DeVrieze and Joshua Hogan that

> The training below will be assigned to all Union officials in the next few weeks. It is related to their handling of confidential and personal information as Union officials. The training is required. You can review the training in the link below.

(GC Exh. 11.) On April 8, 2022, Garland emailed Zimmerman, "Thank you for sharing this with us. I don't see any issues from our side with this." (GC Exh. 11.) Nonetheless, Garland reiterated to Zimmerman, in a telephone conversation, that the International UAW agrees to the training, but not to the Respondent classifying as confidential all information that the Respondent gives the International UAW and its locals in response to requests for information. Moreover, the evidence does not establish that the parties entered formal bargaining pursuant to the CBA over the establishment of online confidentiality training. The parties agree that the online confidentiality training was created to allow "a free exchange of confidential information." (Tr. 103, 165.) Garland testified that he "thinks" most of the union officials at 11 of the 12 plants have taken the training without issue. Moreover, a few of the stewards and committee people at HW facility have taken the online confidentiality training in exchange for getting physical copies of documents the Respondent classified as confidential. Approximately 75 union officials that handle information requests involving confidential information were assigned the training. (Tr. 175.) There were three or four union officials at the HW facility who failed to complete the training. Zimmerman insists that if the Respondent classifies requested information as confidential, it does not impact its decision on the relevancy of the Unions' requests for information.

Abbott and Dotson did not take the online confidentiality training course. Abbott denied that the Respondent told him that the International UAW and the Respondent reached an agreement for local union representatives to take a mandated training on confidentiality to receive confidential documents. (Tr. 48.) However, the evidence contradicts his testimony and clearly shows that Abbott and other union officials were notified via emails from Zatarain of the requirement as early as June 14, 2022, or possibly earlier. (R. Exh. 7.) Through a series of emails Zatarain told Abbott, Dotson, and other union officials, "if you choose to not take the training then you will not be provided with sensitive information but can view it in the presence of LR at our desks." (R. Exh. 7.) Dotson told Zatarain that the International UAW had no authority to make an agreement requiring them to take the confidentiality training. Moreover, Dotson gave undisputed testimony that he has submitted numerous requests for information to the Respondent's labor relations

supervisor and manager, both formal and informal requests without taking confidentiality training. Dotson testified that prior to April 2022 (when he was assigned training on handling sensitive/confidential documents) that except for witness statements, he never had to sign a confidentiality agreement. Moreover, Abbott and Dotson testified that after April 2022, the Respondent classified a broader range of information as confidential. (Tr. 32–35, 135–136.) According to the record, Dotson, Abbott, Bern, and former Shop/Union Chairman Benjamin Pearson were the only union officials at HW who refused to take the online confidentiality training.

### *D. Request for Information on Behalf of Nick Toal*

Sometime during the week of June 28, Abbott was contacted to come to Elias' office to view a video of a forklift driver and bargaining unit member, Toal, colliding into robotic equipment with his forklift truck. Elias showed him a video of the incident and an email describing the incident written by Campen, Toal's supervisor. According to an email stream, Toal admitted to striking the equipment but claims it was not intentional. and was warned that it could be considered destruction of company property. (R. Exh. 9.) Elias informed Abbott that "people higher up to [Elias]" wanted Toal fired but instead Toal would probably be disciplined because the "facts might not support him being terminated." (Tr. 22.) Consequently, on June 28, 2023, a disciplinary hearing was held to address Toal's action. Elias, Campen, Toal, Abbott, and Heidi Spicer attended the hearing.[6] The disciplinary hearing lasted about 40 minutes to an hour. At the start of the hearing, Abbott asked for a copy of the email Campen wrote about the incident, but Elias told him that "[Elias] would have to check into, look into it." (Tr. 25–26.) According to Abbott, Elias read the first half of the email into the record at the disciplinary hearing but "refused" to read the latter half. After Abbott continued to push Elias to read the entire email into the record, Elias ultimately refused. At the conclusion of the hearing, Toal was given a 30-day suspension without pay based on the video showing Toal hitting the robot equipment.[7]

Since Elias would not give him a copy of the email at the disciplinary hearing, Abbott submitted a written request to Elias on June 29, for "all emails" and video related to Toal's discipline.[8] (Jt. Exhs. 3, 8.) On July 6, Dotson sent an email to Elias and Abbott asking whether the Respondent had responded to the information request. Abbott answered that the Union had not gotten a response. On

[6] The evidence does not identify Heidi Spicer's position.

[7] The Union claims that the parties entered into an agreement that videos would not be used as a basis for employee discipline. According to Abbott, Alexiz Zatarain, on behalf of the Respondent, agreed to it with the Union. However, Abbott acknowledges that he has not seen the alleged agreement. The Respondent did not address it. Resolving any dispute on whether the agreement exists is not necessary for me to render a decision on the merits of this case.

[8] Abbott also testified that on the morning of June 29, he went to Elias' office to ask for a copy of the email Campen wrote about the Toal incident. According to Abbott, Elais said that he had been told by higher level management not to give Abbott a copy of the email. (Tr. 29–30.)

July 6, Dotson sent an email with an attachment requesting the video and emails of Toal's collision with the equipment and subsequent discipline. (Jt. Exh. 4.) The request was addressed to Elias, Cox, and Zatarain who did not respond. On July 6, Dotson followed up with a hand delivered written request again asking for the video footage of Toal's incident with the robotic equipment and copies of all emails related to Toal's discipline as a result. (Jt. Exhs. 5, 8.) On July 7 or 10, Dotson spoke with Elias in-person asked why he was not given the requested video and emails. Elias told him he could not have them because Dotson failed to take the online confidentiality training.

(Tr. 128–129.) Pursuant to an email dated July 11, Dotson again asked Cox, Zatarain, and Elias "Why will the company not provide a copy of the video used for discipline?" At some point he was told that the Respondent would give the Union a copy of the videotape but not the email. (Jt. Exh. 4; R. Exh. 8; Tr. 130.) Consequently, on July 14, the Respondent responded to the Union's information requests a with the following:

> Please come to LR if you would like to view [video footage used for the discipline against Toal][9]
>
> All pertaining information was provided during the disciplinary action hearing [in response to the Union's request for all emails pertaining to Toal's discipline]
>
> Please come to LR and speak with Mr. Elias about [copy of company answer to email Abbott sent Elias on June 29]

(Jt. Exh. 6.) On July 24, the Union filed a grievance objecting to Toal being disciplined for colliding with robotic equipment. (Jt. Exh. 2.) On September 7, Dotson resubmitted his formal written request to Cox and Zatarain asking for the email and video pertaining to Toal's discipline. Zatarain sent an email to the Union's agent, Chad Bern (Bern), writing, "Can you let Rhino know that this was responded to back in July? I will print you a copy of the response he was given back on July 7th." (Jt. Exh. 8.) Although the Union eventually received a copy of the videotape, it never got a copy of the emails related to Toal's actions and discipline pursuant to the requests that the Union made on June 29, July 6, and September 7.

## III. Discussion and Analysis

### *A. Legal Standards*

Section 8(a) (5) of the Act mandates that an employer must provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co*. 351 U.S. 149,

[9] "LR" is the Respondent's abbreviated term for its labor relations department.

153 (1956); *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979). ". . . [T]he duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." *NLRB v. Acme Industrial Co*., 385 U.S. 432, 436 (1967). Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co*., 344 NLRB 231, 235 (2005). If the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *The Earthgrains Co*., 349 NLRB 389 (2007).

The standard for establishing relevancy is the liberal, "discovery-type standard." *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities. In *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as follows:

> [T]he Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp*., 274 NLRB 504 (1985); *TRW, Inc*., 202 NLRB 729, 731 (1973).

The requested information does not have to be dispositive of the issue for which it is sought but only must have some relation to it. *Pennsylvania Power & Light Co*., 301 NLRB 1104, 1104–1105 (1991). The Board has also held that a union may make a request for information in writing or orally.

1. The Union's information request is presumptively relevant

The General Counsel argues that the requested information is presumptively relevant because it pertains to a term and condition of employment and the Union's representational role in the grievance process. The Respondent does not present an argument disputing that the information request is presumptively relevant. Rather, it counters that it fulfilled its obligation to attempt to reach a reasonable accommodation with the Union to address confidentiality concerns. Moreover, the International Union, as the exclusive collective-bargaining representative of the unit, agreed to the requirement that union officials take online confidentiality

training before being allowed hard copies of confidential information. Consequently, the Union is bound by the actions of the International Union.

I find that the requested information pertaining to bargaining unit employees is "presumptively relevant" because it involves a term and condition of employment, disciplinary action, and covers information relevant to the Union's role as the bargaining agent. The Board has consistently held that certain information is presumptively relevant. Since the requested information relates to a term or condition of employment, management emails addressing Toal's discipline, it is presumptively relevant, and the burden is on Respondent to rebut the relevancy. It is well settled that information concerning the discipline of bargaining unit employees is presumptively relevant. *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1351 (2010) (finding that information related to the discipline of unit employees was presumptively relevant because the Union needed it to properly process its grievances to arbitration); *Postal Service,* 371 NLRB No. 7 (2021) (the Board held that the union's information request was presumptively relevant because "it pertained to discipline and a potential grievance concerning [the employee's] time and attendance and other terms and conditions of her employment."); *United Technologies Corp.*, 274 NLRB 504, 506 (1985) (finding that Sec. 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances); *Leland Stanford Junior University*, supra at 80; *United Graphics, Inc.*, 281 NLRB 463, 465 (1986) (the Board held that information presumptively relevant to the union's role as bargaining agent must be provided to the union as it "relates directly to the policing of contract terms.").

2. Confidentiality of the requested information

The Respondent advances several arguments to support its defense against the present charge. According to the Respondent, the complaint should be dismissed because (1) it bargained in good faith with the Union to agree on "safeguards to protect the confidentiality of sensitive information"; and (2) even absent a confidentiality agreement, the confidentiality training was a reasonable accommodation for addressing the International's concerns and places a "negligible burden" on the Union's representatives.

First, I find that the Respondent has failed to prove it has a valid confidentiality concern that exempts it from its obligation to comply with the Union's request for information. The Board has consistently held that the party asserting a confidentiality defense has the burden of proving it has a "legitimate and substantial confidentiality" concern in the requested information. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991); *Washington Gas Light Co.*, 273 NLRB 116, 117 (1984); *Postal Service*, 356 NLRB 483 (2011); *Detroit Newspaper Agency*, 317 NLRB 1071 (1995); *Northern Indiana Public Service Co.*, 347 NLRB, 211 (2006).

Confidential information is limited to a few general categories that would reveal, contrary to promises or reasonable expectations, highly personal information. *Detroit Newspaper Agency,* 317 NLRB 1071, 1073 (1995). Such confidential information may include "individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits." Id. Additionally, the partying asserting the confidentiality defense may not simply refuse to furnish the requested information but must raise its confidentiality concerns in a timely manner and seek an accommodation from the other party. Id. at 1072. The disclosure of the information must be balanced against the confidentiality and privacy interests raised by Respondent. *Detroit Edison Co*., supra. The Respondent contends that the requested information is confidential and necessitates security safeguards before complying with the request. However, the Respondent failed to present evidence, other than a blanket statement that the information is confidential, to support its argument. A general statement that information is confidential, without more, is insufficient to prove the employer's burden. *Detroit Edison*, 440 U.S. at 314. See also *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995). In this case, the Respondent has offered nothing, not even speculation, that if the emails are given to the Union, the information will or is likely to be forwarded to unauthorized individuals, thereby violating Toal's privacy. *Watkins Contracting, Inc*., 335 NLRB 222, 226 (2001); *American Medical Response West*, 366 NLRB No. 146, slip op. at 4 (2018) (employer violated the Act when it raised but failed to establish confidentiality interest for not disclosing names of witnesses relied upon to discipline unit employee). Based on the evidence, I find that the Respondent has failed to show that the emails requested by the Union are confidential and subject to the analysis as established in Board/case law.

3. Reasonable accommodative bargaining

Even assuming the Respondent established a confidentiality interest, it cannot simply refuse to furnish the information but rather must engage in accommodative bargaining with the Union to seek a resolution that meets the needs of both parties. The Respondent insists that it made a good-faith effort to accommodate the Union's request for information, and the requirement to take the online confidentiality training placed a "minimal compliance burden" on the Union. The Respondent argues that it offered the Union several choices to accommodate the Union's information request: (1) review, with no hard copy access, the requested emails without taking the online training on handling confidential information; or (2) take the online training on confidential information and receive hard copies of the emails. The General Counsel counters that before the Respondent can engage in accommodative bargaining it "must first demonstrate the evidence of legitimate and

substantial interest in maintaining the confidentiality of the requested information." (GC Br. 14.) According to the General Counsel the Respondent failed to establish its burden and I agree.

As noted earlier in the decision, I found that the Respondent posited nothing more than a generalized claim of confidentiality. When asked several times by the Union for a hard copy of the entire email, the Respondent repeatedly refused. It is undisputed that the Respondent's initial response to the union's information request was submitted on July 14 and consisted of a partial response. (Jt. Exhs. 6, 7.) While it gave the Union a copy of the video tape of Toal hitting the robotic equipment, the Respondent refused to provide the Union with a copy of the requested email. Instead, the Respondent initially read part of the email into the record at the June 28 disciplinary hearing and allowed Abbott to read only a part of it. There is no evidence that the Respondent told the Union the grounds for its refusal was because the email was confidential and the specific bases for labeling it as such. Clearly, this fails to meet the standard set forth pursuant to Board law. See *Washington Gas Light Co*., at 117; *Pennsylvania Power Co*., at 1105.

4. Waiver

The Respondent also argues that the International UAW, on behalf of the Union and other locals, freely entered into an agreement relinquishing their right to receive confidential information without first taking online confidentiality training. The Respondent argues that the International UAW, and not the Union, is the exclusive bargaining representative for the unit. Therefore, the Respondent asserts the agreements that the International UAW reaches with the Respondent are also binding on its local unions, including the Union. The General Counsel asserts that the Respondent's argument on this point is the equivalent to arguing that the International UAW, on behalf of the Union, waived its right to object to the restrictions on receiving copies of the requested email. (GC Br. 16.) The General Counsel disputes this argument noting that the Union and International UAW insist that the agreement was not part of a formal bargaining process pursuant to the CBA. Therefore, the online confidentiality training is not binding on the union officials and cannot be used by the Respondent as a basis for denying the Union physical copies of the requested emails. Moreover, the General Counsel argues that the Respondent fails to sustain its burden because the Union never expressed a clear and unmistakable waiver of its statutory right. I agree.

The Board has held that a waiver of a party's statutory right to be clear and unmistakable. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Timken Roller Bearing Co*., 138 NLRB 15, 16 (1962). "A clear and unmistakable waiver may be found in the express language and structure of the collective-bargaining agreement or by the course of conduct of the parties. The burden is on the party asserting waiver to establish that such a waiver was intended." *Leland Stanford*

*Junior University*, supra. See also, *NLRB v. New York Telephone Co*., 930 F.2d 1009 (2d Cir. 1991), enfg. 299 NLRB 44 (1990); *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024); *United Technologies Corp*., supra. In overturning *MV Transportation, Inc*., 383 NLRB No. 66 (2019), which discarded the longstanding "clear and unmistakable" waiver standard for the "contract coverage" standard, the Board in *Endurance Environmental Solutions* wrote,

> [T]he clear and unmistakable waiver standard properly balances the Act's competing goals of encouraging collective bargaining and providing stability to collective-bargaining relationships by providing consistency and a respite from change to *both* parties. It protects employers, during the term of a collective-bargaining agreement, from the disruption of continuous bargaining over terms and conditions "contained in" the agreement, while also protecting employees' fundamental statutory right to bargain over mandatory subjects as to which no mutual understanding was reached.

*Endurance Environmental Solutions,* at 20. I find that the Respondent has failed to show that the International UAW's actions (nor the Union's) constituted a waiver of its statutory right to the requested information.

The record is devoid of evidence that Garland uttered language which could be considered "clear and unmistakable." It is undisputed that Garland refused to agree to the blanket confidentiality agreement proposed by the Respondent because he feared it would encompass too much information that the Union would be entitled to under the National Labor Relations Act (NLRA). Although Garland later agreed to allow the Respondent to implement a required online training program for union officials to take in order to receive hard copies of confidential materials, he emphasized to Zimmerman that the confidentiality training was not a "bargained item." Moreover, Garland informed Zimmerman that despite their agreement, the Respondent must not apply an overly expansive definition of confidential whenever the Union requested information. Zimmerman told Garland that "won't be an issue" because the Respondent understood that the Union is "entitled to many rights." (Tr. 86.) The parties agree that over the years various strategies for addressing the exchange of confidential information were made because the International UAW and the Union voiced concerns about the Respondent categorizing with too broad a brush information as confidential. There is no substantive evidence to show that the February 2022 conversation between Zimmerman and Garland, the email exchange between them about the online training nor the online confidentiality training program contained a "specific" waiver by Garland or "that the matter sought to be waived was fully discussed and consciously explored and that the waiving party thereupon consciously yielded its interest in the matter." *Trojan Yacht*, 319 NLRB 741, 742–743 (1995). It is inconceivable that the Garland would have waived International UAW's and its locals' rights under the NLRA to obtain presumptively relevant information by allowing the Respondent to circumvent that right with

overly broad classification of documents as confidential and restrictions on their distribution to the Union. Moreover, Garland's repeated insistence to Zimmerman that the Respondent not use their agreement to deny the International UAW and its locals that to which they are entitled to under the Act is evidence that there was no waiver of those rights. I agree with the General Counsel when he writes, "[T]he undisputed facts and testimony make much more sense on the theory that Garland only assented to Respondent's implementation of its confidentiality training on the understanding that he was forfeiting none of the statutory rights that existed prior to such implementation . . . His understanding that Respondent could withhold copies of certain documents until and unless Union representatives complete Respondent's confidentiality training should thus be understood as a pre-arranged accommodation which would apply not to anything and everything that Respondent classifies as confidential, but rather only to those items that it demonstrates a substantial and legitimate concern about within the meaning of *Detroit Edison* and its progeny." (GC Br. 20.)

Accordingly, I find that the record establishes that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to provide the Union with copies of emails related to Toals' discipline that the Union requested beginning on or about June 29, and again on July 5 and6, and September 7.

## CONCLUSIONS OF LAW

1. The Respondent, Deere & Company d/b/a John Deere Harvester Works, is engaged in the manufacture of agricultural, construction, and forestry equipment with an office and place of business in East Moline, Illinois, and operates various facilities throughout the United States.

2. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 865 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. By its failure and refusal to provide the Union with all emails pertaining to the discipline of bargaining unit member Nick Toal it made in writing on or about June 28 and again on July 5 and 6, and September 7, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

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

5. The Respondent has not violated the Act except as set forth above.

## REMEDY

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

The Respondent will be ordered to produce the requested and relevant information, and post and communicate by electronic post to employees the attached Appendix and notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

## ORDER

The Respondent, Deere & Company d/b/a John Deere Harvester Works in East Moline, Illinois at the Harvester Works facility, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to provide the Union information it requested that is necessary and relevant to its role as the exclusive representative of the employees in following unit:

> The employees described in Article 1 of the collective-bargaining agreement effective from November 17, 2021 – November 1, 2027 between the Respondent and UAW and its various locals including the Union.

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

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

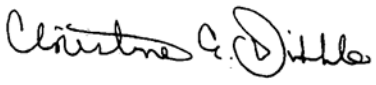
(a) Within 14 days from the date of the Board's Order, furnish the Union with all information it has requested since on or about June 28, 2023.

[10] 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.

(b) Within 14 days after service by the Region, post at its facilities in East Moline, Illinois copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 25, Sub-region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 28, 2023.

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

Dated: August 21, 2025



Christine E. Dibble (CED)
Administrative Law Judge

[11] 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 representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT DO ANYTHING TO PREVENT YOU FROM EXERCISING THE ABOVE RIGHTS

WE WILL NOT refuse to bargain collectively and in good faith with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 865 (Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our unit employees at our Harvester Works facility, in East Moline, Illinois.

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the servicing representative of the exclusive collective-bargaining representative of our employees in the unit at our Harvester Works facility in East Moline, Illinois.

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

**DEERE & COMPANY D/B/A JOHN DEERE HARVESTER WORKS**
**(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 Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

**National Labor Relations Board**
**Region 25/Sub-region 33**
**101 SW Adams St., 4th Floor**
**Peoria, Illinois 61602**
**Telephone: (309) 671-7080**
**Fax: (309) 671-7095**
**Hours of Operation: 8:00 a.m. to 4:30 p.m. CT**
**Hearing impaired callers should contact the Federal Relay Service by visiting its website at www.federalrelay.us/tty**

The Administrative Law Judge's decision can be found at www.nlrb.gov/case 25-CA-321689 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., 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, (313) 226-3200.