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

EXXON MOBIL CORPORATION

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–290036**
16–CA–290519
16–CA–290526
16–CA–290546
16–CA–292224
16–CA–292282
16–CA–294488
16–CA–294495
16–CA–295335
16–CA–296466
16–CA–296486
16–CA–297963
16–CA–298119
16–CA–298619
16–CA–298640
16–CA–302487
16–CA–303915
16–CA–304080
16–CA–304573
16–CA–304603
16–CA–305679
16–CA–305915
16–CA–309596
16–CA–309608
16–CA–309643
16–CA–309648
16–CA–312280
16–CA–312281
16–CA–315679

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Jonathan J. Spitz, *Dan Schudroff, Thomas P. McDonough* and *Thomas L. Petriccione, Esqs. (Jackson Lewis, P.C.),* for the Respondent.

Craig Stanley, *Esq.*, and *Eva Shih, Esq. (Exxon Mobil 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

MARA-LOUISE ANZALONE, Administrative Law Judge. This case was tried in Houston, Texas over the course of 6 days from October 21, 2024, to November 13, 2024. The United

Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 13-2001 (Charging Party, the Union or Local 13-2001) filed charges and amended charges, as captioned above, against Exxon Mobil Corporation (Respondent or Exxon Mobil). An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on May 6, 2024; an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing issued on September 4, 2024 (the complaint). The Acting General Counsel alleges that Respondent violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to respond to, or untimely responding to, information requests and by making unilateral changes to unit employees' working conditions. It is additionally alleged that Respondent, by its managers, violated Section 8(a)(1) of the Act by making coercive statements to employees. Respondent filed a timely answer to the complaint denying all material allegations.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs.[1] Post-hearing briefs were filed by the Acting General Counsel, Charging Party and Respondent, and each of these briefs has been carefully considered. Accordingly, based upon the entire record herein, including the post-hearing briefs and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT[2]

I. JURISDICTION

At all material times, Respondent 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, Local 13-2001 is a labor organization within the meaning of Section 2(5) of the Act.

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[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh.__" for Acting General Counsel's Exhibit; "R. Exh. __" for Respondent's Exhibit; "Jt. Exh. __" for Joint Exhibit; "GC Br. at __" for the Acting General Counsel's post-hearing brief; and "R. Br. at __" for Respondent's post-hearing brief.

[2] I have based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying and the form of questions eliciting responses. Credibility findings need not be all-or-nothing propositions, and it is common for a fact finder to credit some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB 622, 622 (2001).

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

II. General Factual Background

Respondent operates the Baytown facility, which consists of a crude oil refinery, chemical plant and laboratory. Since the early 1960s, the Union has represented three bargaining units at the facility: the Chemical Company Unit, the Lab Unit and the Fuels & Lubricant Unit (collectively, the bargaining units).[3] There are approximately 1,000 employees across the bargaining units, and a total of approximately 4,000 employees at the Baytown facility. (Tr. 37–39, 42, 44–47.) At all relevant times, a collective bargaining agreement was in place covering each of the bargaining units. See GC Exhs. 2, 3, 4.

Each of the information requests at issue in this case was drafted by Local 13–2001's then-President and Business Agent Ricky Brooks (Brooks). Brooks has represented bargaining unit employees since 2000 in various Union roles. Since 2020, he has also worked full-time at the Baytown facility at its scale house (discussed in more detail below). From September 2021 until April 2024, Respondent's Labor Relations Advisor Patrick Fields (Fields), was charged with responding to Brooks' information requests. (Tr. 40–43, 744–745, 748–749, 1041, 1133–1134).

III. The Alleged Unfair Labor Practices

A. The Alleged Unilateral Changes

The Acting General Counsel argues that Respondent made changes to three of its policies affecting unit employees' working conditions without affording the Union notice and the opportunity to bargain. These policies address respirator wear, drug testing and floating holidays. Respondent counters that no change occurred with respect to the second and third policies and, with respect to the first, any material and significant change was undertaken pursuant to its rights under the parties' collective bargaining agreements.

1. Clean shaven/respirator policy

The Acting General Counsel alleges, and Respondent admits, that in October 2021, Respondent, without notice or bargaining, modified a written policy that previously required all employees to be clean shaven. While admitting to changing the clean-shaven policy unilaterally, Respondent claims that this conduct did not violate 8(a)(5) because: (a) the revision did not amount to a material change; and (b) because the Union waived its right to bargain over them. I disagree with Respondent's first position but agree with the second.

a. Facts

(i) The relevant contractual language

[3] Although there are three separate units, I will for brevity's sake refer to the represented employees as the "bargaining unit employees."

Each of the parties' CBAs contains an identical management rights clause, which reads as follows:

> **FUNCTIONS OF MANAGEMENT**
>
> The Company shall retain all rights of management resulting from the ownership of its plant and facilities or pertaining to the operation of the business, except to the extent that such rights are limited by the provisions of this Agreement.

(GC 2 at 11; GC 3 at 10; GC 4 at 11.) Each contract also includes a separate article entitled, "Working Rules," which states:

> As a means of directing the working force, directing and controlling operations of the Plant, and maintaining discipline and appropriate standards of both individual and group conduct, the Company will from time to time, as it deems advisable, publish working rules. The application of such rules shall not be in conflict with any provision of this Agreement.

(GC 2 at 29; GC 3 at 28; GC 4 at 11.)

Finally, each of the contracts also includes a clause entitled, "Health and Safety," which reads:

> Health and Safety are foundational Company/Union values. In upholding the values, the Company/Union shall persistently strive: (1) to maintain sanitary and healthful working conditions; (2) to prevent industrial accidents; (3) The Company shall provide adequate hospitalization at Company expense for the care of employees injured in the line of duty; and (4) The Company shall provide health supervision by a competent medical staff.

The clause also expressly reserves to Respondent the right to use video technology to monitor safety in the workplace, as well as the right to take unilateral action to ensure workers' safety and health in emergency situations. (GC Exh. 2 at 31–33; GC Exh. 3 at 30–31; GC Exh. 4 at 24–25.)

(ii) Site Safety Standard 3030 and the "Clean Shaven Policy"

Respondent maintains numerous "Site Safety Standards," which are written rules governing various aspects of workplace safety. One of these standards, Site Safety Standard 3030, titled "Respiratory Protection" (SSS 3030) sets out Respondent's Respiratory Protection Program. The Respiratory Protection Program is administered by Respondent's Industrial Hygiene Coordinator, who is responsible for ensuring that the program is "effective and properly implemented" and is specifically charged with conducting an annual review of the program and

updating it as needed. Pursuant to the Respiratory Protection Program, Baytown employees have been required—for at least the past 33 years—to wear respirators as instructed by management. It is undisputed that an employee in violation of SSS 3030, which contains this requirement, is subject to discipline. (GC Exhs. 13, 24; Tr. 581.)

Prior to October 2021, SSS 3030 also contained a provision referred to as the "clean shaven policy"—mandating that Baytown employees be clean-shaven in order to be properly fitted with respirators.[4] The policy applied to the entire workforce, regardless of whether an employee's job duties would actually call for wearing a respirator, stating:

> Facial hair, including beards, goatee's, sideburns or mustaches, which intrude into the sealing surface of tight fitting respirators or which interfere with the function of the respirator's valves, are strictly prohibited.

(Tr. 582−583; GC Exh. 13.) Discretion as to what constitutes "clean shaven" is reserved to management; SSS 3030 states that "[t]he immediate supervisor will have the final authority for requesting an individual to shave." Id.

(iii) Respondent relaxes its "Clean Shaven Policy"

In October 2021, Respondent revoked SSS 3030's clean shaven requirement for all employees except process operators (whose job duties actually call for wearing a tight-fitting respirator); according to Respondent, this meant that 80 percent of the Baytown employees became exempt from the requirement. (R. Br. at 21.) In early October, Fields verbally informed Brooks that SSS 3030 was being changed to allow employees to have facial hair unless required to shave for specific tasks; he sought Brooks' assistance in communicating the requirement to shave for specific tasks to the unit employees.

Shortly after this conversation, Brooks emailed Fields a demand to bargain over the change. As he explained, because failing to adhere to safety rules, such as the clean-shaven policy, could serve as a basis for discipline, he sought to clarify what unit members would be expected to do under the relaxed policy. In addition, he testified, union officials were concerned about the fairness of the new policy, which would continue to require process operators to shave, while exempting other employees. (Tr. 91–92, 102–106, 258–259, 583; GC Exh. 14.)

(iv) The parties' past practice regarding changes to SSS 3030

The record reveals that Respondent had a regular practice of unilaterally revising its Site

[4] The respirator's "fit" is essential to its effectiveness and SSS 3030 requires employees to be "fit tested" on an annual basis and maintain a card documenting their correct respirator size. Facial hair interferes with the fit of the respirator—hence, the clean shaven requirement.

Safety Standards, including SSS 3030, without objection by the Union.[5] Specifically, it is undisputed that, prior to October 2021, the Union took no action when Respondent unilaterally revised SSS 3030 on dozens of occasions (26 in all). (Tr. 252−253, 300.) Although Brooks testified that none of these prior revisions had any adverse impact on the health and safety of unit employees, this testimony appeared somewhat rehearsed and went uncorroborated by documentary evidence; I therefore do not credit it.

b. Analysis

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). Whether a change rises to the level of material, substantial, and significant is determined "'by the extent to which it departs from the existing terms and conditions affecting employees.'" *Salem Hosp. Corp*., 360 NLRB 768, 769 (2014) (citing *Southern California Edison Co*., 284 NLRB 1205, 1205 fn. 1 (1987), enfd. 852 F.2d 572 (9th Cir. 1988)).

(i) The October 2021 change was material.

Respondent claims that relaxing the clean shaven policy was not a material change because it merely revoked a seemingly gratuitous shaving requirement for employees who were not actually required to wear tight-fitting respirators. I disagree.

It is well established that a uniform requirements and workplace dress codes constitute mandatory subjects of bargaining. See, e.g., *Salem Hosp. Corp*., 360 NLRB 768, 769 (2014), *Medco Health Solutions of Las Vegas, Inc*., 357 NLRB 170, 171−172 (2011); *Crittenton Hospital*, 342 NLRB 686, 690 (2004); *Public Service Co. of New Mexico*, 337 NLRB 193, 199 (2001). The Board has found, however, that a minor change to such a policy not shown to adversely affect employees, is not material and substantial enough to constitute an unfair labor practice. Id. In *Crittenton Hospital* case, for example, the Board found that a hospital's previous policy, which ""strongly discouraged artificial nails," and its new policy, which outright prohibited artificial nails, were not so materially different to constitute an 8(a)(5) and (1) violation. 342 NLRB at 690.

In the instant case, by contrast, employees were not merely subjected to a minor change to an existing policy; rather, Respondent wholesale revoked the requirement that certain employees shave for work each day. Moreover, the Board has specifically found that a policy that precludes the wearing of facial hair in order to accommodate tight-fitting respirators constitutes a

[5] The Acting General Counsel by its post-hearing brief, claims that "[t]he Union had previously taken issue with changes to site safety standards." (GC Br. at 10.) I do not find this assertion to be supported by the record. Although Brooks testified that the Union had historically "challenged" other Site Safety Standards, including by filing unfair labor practice charges, no evidence was adduced demonstrating that any of these challenges involved a claim that Respondent had unilaterally revised a standard. (Tr. 249–250.)

mandatory subject of bargaining. *Public Service Co. of New Mexico*, 364 NLRB 1017, 1021, 1022 (2016) (finding employer to have unilaterally implemented clean-shaven/respirator policy in violation of 8(a)(5)); see also *Hanes Corp*., 260 NLRB 557, 563 (1982) (same). It follows that the revocation of such a policy for a particular group of employees is also a bargainable subject.

(ii) The Union waived its right to bargain over changes to SSS 3030.

Respondent alternately argues that it was privileged to unilaterally modify the clean shaven/respirator policy because, by virtue of the parties' collective bargaining agreement and past practice, the Union waived its right to bargain over this action. I agree.

(a) The standard for waiver: "contract coverage" vs. "clear and unmistakable"

The Board's traditional waiver analysis seeks to determine whether some combination of contractual language, bargaining history and past practice establishes that the union waived its right to bargain. *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141, slip op. at 2 fn. 14 (2024). Since 1949—and except for a period between September 10, 2019 though December 10, 2024—the Board has applied 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.

During its half-decade departure from this standard, the Board replaced it with a "contract coverage" defense, whereby waiver is found if the employer's 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). Under this standard, the Board will not require that the parties' contract specifically mention, refer to, or address the employer's decision at issue. *MV Transportation*, supra at slip op. at 11–12 (2019). In its 2024 return to the clear and unmistakable waiver test—set forth in *Endurance Environmental*, supra—the Board left resolution of retroactive application of the reinstated standard to a future determination. Id. at slip op. 21. This means my initial determination must be whether the clear and unmistakable or contract coverage standard should apply here.

The Board will apply a new rule retroactively unless doing so will result in manifest injustice. *SNE Enterprises*, 344 NLRB 673, 673 (2005). In making that determination, "the Board will consider the reliance of the parties on preexisting law, the effect of retroactivity on accomplishment of the purposes of the Act, and any particular injustice arising from retroactive application." Id.; see also *Cristal USA, Inc.*, 368 NLRB No. 141, slip op. at 2 (2019). The Board has since found the retroactive application of *Endurance Environmental* appropriate on one occasion. In that case, however, the Board specifically noted that the parties had negotiated their collective bargaining agreement prior to *MV Transportation*, that is, at a time when the clear and

unmistakable waiver standard applied. Accordingly, the Board found, "while negotiating the agreement, the Respondent could not have detrimentally relied on the 'contract coverage' standard…" *Hospital Español Auxilo Mutuo de Puerto Rico, Inc*., 374 NLRB No. 6, slip op. at 5 (2024).

Here, Respondent argues by contrast that retroactive application of *Endurance Environmental* would unfairly punish it for relying on the interim, contract coverage standard in negotiating the relevant collective bargaining agreements. This would be a compelling argument were it backed by the evidence. I find, however, that Respondent failed to adduce evidence that each of the relevant contracts was, in fact, negotiated prior to December 10, 2024. I will therefore apply the clear and unmistakable test.

(b) The contractual language and past practice meet the "clear and unmistakable" standard for waiver.

I agree with Respondent that, pursuant to the *Endurance Environmental* standard, it was granted the right, by virtue of the parties' collective bargaining agreements as well as the parties' past practice, to narrow the scope of SSS 3030 to apply only to process operators.

In *BASF Wyandotte Corp*. (decided under the Board's pre-2019 clear and unmistakable standard), the Board found lawful an employer's unilateral implementation of new rule, effectively prohibiting facial hair on employees who may from time to time need to wear respiratory protective equipment. 278 NLRB 173 (1986). In that case, the employer relied on a management rights clause reserving its right to "make and enforce such rules as the Company may deem necessary or proper for the conduct of its employees and the operation of the plant." Id. at 177−178. Noting that this clause was adopted at a time when there were existing general safety rules and plant regulations expressly providing for wearing of respirators where indicated or directed by the employer. The Board found that, viewed in light of such rules, the provisions of the management-rights clause operated to waive the union's right to bargain about new rule against facial hair. Id. at 181−182.

Respondent's recission of its clean-shaven requirement for non-process operators is akin to the ban on facial hair considered in *BASF Wyandotte*. As in that case, the CBAs at issue here reserve to Respondent the discretion to publish working rules as "means of directing the working force, directing and controlling operations of the Plant and maintaining discipline and appropriate standards of both individual and group conduct." For over 30 years, one of these rules—SSS 3030—has required Respondent's employees to don respirators as directed by management. Accordingly, when the parties agreed to the current contractual language reserving to Respondent the right to promulgate working rules, this constituted a waiver of the Union's right to bargain concerning the terms of SSS 3030, including the clean shaven requirement.

In addition, I note that the parties' past practice also indicates waiver. In this regard, SSS 3030 itself contemplates (and in fact mandates) that a designated management official review SSS 3030 annually and update it as needed. As the record demonstrated, the policy had been modified prior to 2021 on at least 26 other occasions without protest by the Union. Thus, modifying the policy did not in fact alter the status quo because it was part of a regular,

longstanding and consistent past practice. See *Wendt Corp.*, 372 NLRB No. 135, slip op. at 4 (2023).

Accordingly, I find that Respondent was privileged by virtue of the Union's waiver to unilaterally modify SSS 3030's clean shaven requirement and therefore recommend dismissal of the allegation that Respondent violated Section 8(a)(5) by doing so.

2. Drug testing

The Acting General Counsel alleges that, on September 28, 2022, Respondent changed its drug and alcohol testing policy by expanding the circumstances under which post-accident drug testing is performed. As noted, Respondent denies changing the policy as alleged. It also claims that this allegation should be deferred to the parties' grievance and arbitration procedure. I disagree that deferral is appropriate but agree with Respondent that the allegation lacks merit.

a. Facts

Respondent's drug testing policy is codified in a "supervisor checklist" that spells out four situations in which a bargaining unit may be required to take a drug and alcohol test, stating:

> A decision to test is appropriate when an employee is suspected of being unfit for work. This would normally require evidence of at least one of the following events: (1) observable signs of impairment (e.g., alcohol on breath, frequent unexplained absences, poor coordination, slurred speech, etc.); (2) finding unauthorized alcohol, drugs, or drug paraphernalia in a location to which the employee has access; (3) unusual, inappropriate, or noticeably changed behavior occurring either suddenly or gradually over time; (4) an inexplicable accident, incident, near miss, or injury where impairment due to consumption of alcohol or drugs may have been a contributing factor.

GC Exh. 16 at 1. The checklist further states, "[s]upervisors have the authority to determine when a test should be administered." Id.

On September 28, 2022, Site Superintendent John Watson (Watson) ordered bargaining unit employee Thomas Drewery (Drewery) to undergo a drug and alcohol test. This occurred after Drewery, who had worked at Baytown for nearly ten years, stepped in a large (2½ to 3 feet diameter) puddle of hot steam condensate[6] while tracing a line overhead. Tracing a line involves following a pipe in a pipe rack from one location to another and is a common job duty for process operators, such as Drewery. Watson interviewed Drewery, who admitted that he had been aware of the puddle before he stepped into it. This, according to Watson, as well as the sheer size of the puddle, made it necessary to rule out the possibility that Drewery was impaired.

[6] Condensate is 140° to 150° Fahrenheit water. (Tr. 123.)

As he testified, "[w]hy else would he step into a puddle of hot condensate that he knew was there?" (Tr. 382–385, 402–404, 472, 483.)

Drewery requested union representation and Union President Brooks became involved, calling Watson in an effort to convince him that drug testing Drewery was unnecessary. During this conversation, according to Brooks, Watson told him that the "directive" was that "they're going to test for every incident, every time." I found this testimony, however, rehearsed and do not credit it.[7] There is no evidence that Respondent in fact ordered a drug test after every "incident" that took place after September 28, 2022.

Ultimately, Drewery submitted to the test and was placed on paid leave for approximately one week, pending the results. While on leave, Drewery exchanged text messages with Second Line Supervisor Todd Rose (Rose). When Drewery complained that he felt getting tested was "bull crap," Rose responded, "Really? I thought it was pretty common to get DNA'd [drug and alcohol tested] after an incident. Maybe things have changed since 2010." (Tr. 133, 387; GC Exh. 19.)

After Drewery's test came back negative, however, Rose apparently changed his mind. On October 5, 2024, he texted Drewery:

> I've had discussions with several upper management since this happened—Fullen, Shockley and Adamson—questioning what prompted the D&A. I also let them know that everyone at LECC [Light Ends Control Center] including all FLS's [First Line Supervisors], myself and Arturo strongly feel the decision was bullshit.

(GC Exh. 19.) When Drewery returned to work on October 6, 2022, Rose called him to his office. Explaining that he and the other supervisors in the Drewery's unit did not agree with him being tested, he said they were sorry that it had happened. According to Drewery, Rose also told him that "it came down that we had had a lot of incidents around the site, and just, they were drug testing the next thing, and I was the next thing." The record contains no evidence of the spate of incidents to which Rose allegedly referred. (Tr. 394–396.)

b. Analysis

(i) Deferral is inappropriate.

Whether deferral to the grievance and arbitration process is appropriate is a "threshold question" which must be decided prior to addressing the merits of the allegations at issue. *Sheet Metal Workers Local 18--Wisconsin (Everbrite, LLC)*, 359 NLRB 1095, 1096 (2013) (quoting *L.*

[7] Watson testified he did not recall speaking with Brooks on this occasion; he did, however, credibly testify that Respondent has never maintained "a rule that drug testing happens for every accident." (Tr. 481, 491.)

E. Myers Co., 270 NLRB 1010, 1010 fn. 2 (1984)). Under *Collyer* and *United Technologies*, prearbitral deferral to the grievance and arbitration procedure is warranted where:

> the parties' dispute arises within the confines of a long and productive collective-bargaining relationship; there is no claim of animosity to employees' exercise of Section 7 rights; the parties' agreement provides for arbitration in a broad range of disputes; the parties' arbitration clause clearly encompasses the dispute at issue; the party seeking deferral has asserted its willingness to utilize arbitration to resolve the dispute; and the dispute is well suited to resolution by arbitration.

Sheet Metal Workers Local 18--Wisconsin, 359 NLRB No. at 1095−1096 (citing *United Technologies*, 268 NLRB 557, 558 (1984); *Collyer Insulated Wire*, 192 NLRB 837, 842 (1971)). The Board has held that its deferral policy ensures that where the parties have voluntarily created a dispute resolution mechanism "culminating in final and binding arbitration, it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt by the parties" to resolve conflict through that means. *United Technologies*, 268 NLRB at 558.

The Board has previously deferred to the grievance and arbitration procedure allegations that an employer violated Section 8(a)(5) of the Act by unilaterally implementing substance abuse or drug testing policies. See, e.g., *United Hoisting & Scaffolding, Inc*., 360 NLRB 1258, 1261 (2014) (citing cases). Respondent, however, is currently defending against charges that it unlawfully repudiated the very grievance procedure to which it would have me defer this allegation. See *ExxonMobil Chemical Co.*, JD(SF)−14−25, 2025 WL 1662489 (Jun. 11, 2025). Under such circumstances, deferral is inappropriate. *United Technologies*, 268 NLRB at 560 (noting the Board will not defer where there is a "rejection of the principles of collective bargaining") (quoting *General American Transp. Corp*., 228 NLRB 808, 817 (1977) (Members Penello and Walther, dissenting)); *Collyer*, 192 NLRB at 845 (Member Brown, concurring) (deferral inappropriate where there is a "repudiation of the collective bargaining process).

(ii) Respondent did not abandon its established drug testing standard in violation of § 8(a)(5).

The Acting General Counsel asserts that Drewery's drug test reflected an abandonment of the "supervisor's checklist" standard for drug testing, i.e., requiring at least one of the four enumerated circumstances to trigger a test. Respondent counters that it in fact adhered to the fourth prong of the checklist, in that Watson ordered Drewery's test based on his conclusion that his accident was "inexplicable."

There is no question that employee drug testing is a mandatory term and condition of employment that must be bargained. See *Tocco, Inc*., 323 NLRB 480 (1997), overruled on other grounds by Anheuser-Busch, Inc., 351 NLRB 644 (2007); *Sivells, Inc*., 307 NLRB 986 (1992); *Seiler Tank Truck Service*, 307 NLRB 1090, 1100 (1992); *Mistletoe Express Service*, 300 NLRB 942 (1990); *Johnson-Bateman Co*., 295 NLRB 180 (1989). Based on the record evidence, however, I do not find that Respondent in fact altered its drug testing standard in Drewery's case.

As a preliminary matter, I credit Watson's straightforward explanation that he felt compelled to rule out the possibility that drugs or alcohol played a role in Drewery's accident. Indeed, his rationale—that there was no obvious, logical explanation as to why an experienced process operator would have stepped in a large condensate puddle he admittedly knew of—comports with Respondent's policy regarding "inexplicable" incidents.

Moreover, the Acting General Counsel failed to offer evidence that, prior to September 28, 2024, accidents similar to Drewery's were in fact considered "explicable" under that policy. In the absence of such evidence, finding a violation would essentially amount to my second guessing Watson's judgment in that regard. This I decline to do. See *Ryder Distribution Resources,* 311 NLRB 814, 816–817 (1993); see also *Sam's Club*, 349 NLRB 1007, 1009 fn. 10 (2007) ("'[A]s we have so often said: management is for management. Neither the Board nor Court can second-guess it or give it gentle guidance by over-the-shoulder supervision'") (quoting *NLRB v. Columbus Marble Works*, 233 F.2d 406, 413 (5th Cir. 1956)); *FPC Advertising Inc.*, 231 NLRB 1135, 1136 (1977) (employer's business conduct is not to be judged by any other standard other than which it has set for itself).

Rather than provide evidence of a past practice regarding application of the "inexplicable" prong of Respondent's drug testing standard, the Acting General Counsel instead asserts that a violation should lie based on criticism of Watson's decision by lower-level supervisors after Drewery's test came back negative. It does appear that some of them considered Watson's decision to be "bullshit"—or at least told Drewery that they did; Rose even offered that Drewery was simply made an example of based on an apparent recent spike in safety incidents. Such musings ring of platitudes designed to placate Drewery rather than admissions that his accident did not in fact merit a drug test as an "inexplicable" incident. In any event, they do not substitute for evidence of a past practice changed by the circumstances of Drewery's test.

Accordingly, I recommend that the allegation that Respondent unilaterally revised its drug testing standards in violation of 8(a)(5) be dismissed.

3. Floating holidays

a. Facts

The Acting General Counsel alleges that Respondent unilaterally changed its floating holiday policy by prohibiting employees from scheduling a floating holiday on a regularly scheduled day off.

(i) The holiday floater benefit

By way of background, Respondent recognizes a number of holidays (i.e., July 4, Thanksgiving, Christmas); for at least twenty years, bargaining unit employees have also been permitted to designate a number of additional holidays as "floating holidays" (also known as "holiday floaters"). (Tr. 48–49.) This benefit is spelled out in each of the three collective bargaining agreements as follows:

> Each employee may select (2) additional holidays at his/her option, provided the employee is on the payroll prior to July 1st. If the Employee is on payroll July 1st or later, they are only eligible for one (1) optional holiday of the applicable year.

(GC Exh. 2 at 18; GC Exh. 3 at 16; GC Exh. 4 at 26). The number of floating holidays was increased to three in 2003. (Tr. 48.)

Nothing in the parties' collective bargaining agreements expressly prohibits an employee from designating an already scheduled day off as a holiday floater. This is significant because doing so permits an employee working a "4/10" schedule (i.e., a four-day work week of 10 hour days) to earn double-time on his next overtime shift. As current employee Robert Gonzales explained, "if you were going to run into your 14th day on a weekend and you needed to work overtime for some reason," designating a non-workday as a holiday floater would mean "you would get your double time on Sunday." (Tr. 865.)

(ii) Respondent issues EIB 03–09, addressing the unscheduled workday/holiday floater scenario.

There appears to have been some 'buyer's remorse' on Respondent's behalf with respect to this arrangement. In May 2003 (the same year the number of holiday floaters was increased to three), Respondent's Human Resources Department issued Employee Information Bulletin 03–09 (EIB 03–09) advising that holiday floater requests were subject to approval by an employee's supervisor and that "[a]ll employees should schedule their floating holiday on a regularly scheduled workday." (GC Exh. 6; Tr. 57.)[8]

In March 2017, Brooks engaged with Fields' predecessor Greg Ford (Ford) regarding the application of the holiday floater benefit. Taking the position that holiday floaters were only available to "rotating shift employees," Ford forwarded Brooks a copy of EIB 03–09 in apparent support of this position. Brooks objected, demanding that Respondent waive the deadline for the Union to file a grievance on the subject. In response, Ford informed him:

> That ship has sailed already. This practice has been in place since 2003 per the attached EIB to "All Employees". This memo was issued to you and other members of the USW leadership for which all were very much aware. I am willing to discuss the issue with my management, however, I can't provide the union any guarantee on the timeliness issue for this particular case. Willing to discuss further after I discuss with my management. Thanks…

[8] Brooks—who was serving as a steward in May 2003—claimed that he did not become aware of EIB 03–09 when it issued. I do not credit this testimony; on cross examination, he admitted that he regularly received such bulletins via email and had access to them on the company's intranet site; moreover, his zealous approach to representation suggests to me that he likely stayed abreast of management directives such as EIB 03–09. (Tr. 57, 196–199.)

(R. Exh. 2; Tr. 204–207.) There is no evidence, however, that the Union in fact filed any grievance regarding the issuance of EIB 03–09, or any other aspect of the holiday floater policy, until 2021.

(iii) The historical practice prior to 2021

Fields testified that, consistent with EIB 03–09, Respondent has a policy of permitting employees to designate only scheduled workdays as holiday floaters. However, it appears that, between October 1, 2013 and June 30, 2020, on at least 20 occasions, employees in fact successfully scheduled a holiday floater on their regularly scheduled day off.[9] Respondent admits to ten of these occasions but avers that, considering the size of the mechanical bargaining unit, instances of employees successfully contravening EIB 03–09's directive were "clearly inadvertent outliers." (Tr. 69, 665, 864–865; R. Exh. 4; R. Br. at 13, fn. 2 & 15.)

The record evidence reveals that, of the 165 holiday floater designations during the period in question, approximately 12% of them were designated on a scheduled day off. These raw numbers, however, shed little light of whether these cases were actually "outliers," since there is not evidence disclosing how many times employees requested but were denied such a request. Only this denominator would inform what percentage of the time employees successfully acted in contravention of EIB 03–09.

(iv) Respondent denies McFatridge's request for a non-workday holiday floater.

In late September 2021, Brian McFatridge (McFatridge) requested a holiday floater for Friday, October 1, 2021. At the time, Friday was his regularly scheduled day off. McFatridge was scheduled to work overtime the following weekend and scheduling the floating holiday on the Friday in question would have entitled him to double-time pay on October 3. McFatridge's request was denied by supervisor John Patton (Patton).[10]

Brooks intervened on McFatridge's behalf. He spoke with Fields, who told him that the company's interpretation of the contractual language was that scheduling a floating holiday on a regularly scheduled day off was not permitted. Fields then sent Brooks a copy of EIB 03–09. (Tr. 53, 56, 58, 308–311, 314.)

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[9] The employees and dates in question were: Jarrod Pedescleaux on 6/5/2015; Edith Mayes-Mitchell on 3/25/2016, 2/10/2017, 3/10/2017; Melanie Clay on 12/28/2018; Glenda Williams on 12/14/2018; Robert Gonzales on 12/20/2019 and 11/6/2020; James Parr on 7/26/2019; and Gilbert Serrano on 3/27/2020. See R. Exh. 4 at 128, 161, 186, 206, 236, 246, 264, 306, 331. I note that the Acting General Counsel summarily claims—without citation—that the record actually includes "at least" 27 such incidents (see GC Br. at 26); I have no way of assessing this claim and therefore rely on my own review.

[10] McFatridge testified that he had previously successfully designated a scheduled day off as a holiday floater "a couple of times" but there is no documentary evidence corroborating this. (Tr. 320–321.)

b. Analysis

As a preliminary matter, Respondent's issuance of EIB 03−09, curtailed the broad holiday floater benefits contained in the parties' collective-bargaining agreements. The Board has found such conduct to violate Section 8(a)(5) of the Act, holding that, once an employer negotiates a collective bargaining agreement granting employees discretion to schedule vacation days, it may not claw back that discretion by issuing a policy directive requiring management approval for employees' requests and setting limits on eligible vacation days. See *Alwin Mfg. Co*., 314 NLRB 564 (1994), enfd. 78 F.3d 1159 (7th Cir. 1996).

However, the Acting General Counsel does not allege the 2003 issuance of EIB 03−09 (or its subsequent maintenance as a policy) as unlawful. Rather, the complaint alleges that, notwithstanding the wording of EIB 03−09, Respondent in fact maintained a policy whereby "employees could select a date on a scheduled or non-scheduled work day to be a Floating Holiday" and that the 2021 denial of McFatridge's request violated § 8(a)(5) as a departure from that past practice. (Compl. ¶ 11(a).) Due process constrains me to hold the Acting General Counsel to his theory. *Lamar Advertising of Hartford*, 343 NLRB 261, 265−266 (2004) (citing 5 U.S.C. § 554(b)).

An employer's practice will be considered a term and condition of employment that may not be changed without notice and bargaining if it occurs with such regularity and frequency that employees could reasonably expect the practice to occur on a consistent basis. See *Wendt Corp*., 372 NLRB No. 135, slip op. at 9 (2023). The party asserting the practice bears the burden of proof. *Consolidated Communications Holdings, Inc.*, 366 NLRB No. 152, slip op. at 3 (2018) (citing *Garden Grove Hosp. & Med. Cntr.*, 357 NLRB 653, 653 fn. 4, 5 (2011)).

I find that the Acting General Counsel has failed to prove that, prior to October 2021, Respondent had a longstanding regular and consistent (i.e., nonintermittent) past practice of permitting employees to schedule holiday floaters on non-work days. At best, the record discloses twenty instances of such an occurrence over a multiple-year period, averaging one such occurrence every four months. Moreover, I note that half of these occurrences involved one of two employees,[11] suggesting to me that, at most, one or more individual supervisors were failing to follow EIB 03−09. Finally, there is no evidence as to how many requests for a non-work day holiday floater were—like McFatridge's—denied.

The Acting General Counsel has thus failed to establish that, despite Respondent's written policy, employees were regularly permitted to designate non-work days as holiday floaters such that unit employees would reasonably expect such requests to be granted. Accordingly, the denial of McFatridge's holiday floater request was not a change to an established past practice mandating bargaining, and I recommend that the allegation that Respondent unilaterally changed its holiday floater policy in violation of § 8(a)(5) be dismissed.

[11] These employees were Edith Mayes-Mitchell (7 instances), and Robert Gonzales (3 instances). See R. Exh. 4 at 79, 130, 132, 160, 161, 186, 242, 246, 306.

B. The Alleged Coercive Statements

The complaint's independent 8(a)(1) allegations are based on incidents in August 2022 during which two supervisors admonished union officials that they were not to conduct union business during work time. The Acting General Counsel asserts that each of these statements constituted "threats, coercion and restraint of Union officials" in violation of Section 8(a)(1) of the Act. I agree that Respondent violated the Act as alleged.

1. Facts

As noted, Union President Brooks works at the Baytown refinery's scale house, which contains equipment used to weigh trucks entering and exiting the facility. On occasion, trucks are backed up waiting to enter the scale house, which causes delays and expense in the Baytown facility's operations. According to Brooks' unrebutted testimony, the area between the scale house and the road where backups occur is under video surveillance. (Tr. 43−44, 894–896.)

On August 22, 2022, Brooks (who had just returned from leave) was at his post when he was approached by Union Vice-President Michael Loy (Loy), who had been handling bargaining unit employees' grievances in Brooks' absence. According to Loy, he went to check in with Brooks and see if there was any additional assistance he needed. They conversed for approximately 5−10 minutes; at one point during their discussion, Brooks' supervisor, Wendell Stanley (Stanley) entered the scale house and briefly greeted the two men. By his own admission, Stanley overheard Brooks and Loy "talking about grievances." (Tr. 273, 330−333; 521−523, 540−541.)

Respondent claims that Stanley also observed a "large backlog of trucks leading into the scales building…waiting for Brooks' attention." (R. Br. at 4, 29.) This contention is rather dubious, however. Indeed, despite being asked a barrage of leading questions by Respondent's counsel, Stanley himself failed to support this claim in a credible manner. At best, he testified that he had—at some unspecified time—seen a backlog of trucks at the scales (Tr. 509); that he was not sure if such a backlog had occurred in August 2022 (Tr. 510); and that on an unspecified date in August 2022, he spoke with Brooks about backlogs and "working efficiently." (Tr. 515.)[12] Casting even more doubt on this version of events, despite Brooks' unrebutted testimony that any back up would have been captured by Respondent's surveillance cameras, Respondent failed to introduce video evidence of a backup on the day in question.

The following day, Loy's own supervisor, Charles Whitaker (Whitaker), entered Loy's office, closed the door, and asked, "as a favor to me, can you not go to the scale house whenever Brooks is working?" He then stated that there were reports of Brooks having frequent visitors at the scale house, and that he understood that Loy needed to talk to Brooks on a day-to-day basis but that he was not to speak to him physically at the scale house. He clarified that Loy was

[12] I do not credit Stanley's awkward attempt, on cross examination: (1) to 'reverse engineer' the truck backup into existence, positing that there *must* have been a backup, because he recalled speaking with Brooks about it; and (2) to suddenly 'recall' that he observed Brooks and Loy talking about grievances at a time when trucks were backed up. (Tr. 519−521.)

permitted to call Brooks or meet him somewhere else at the facility, and that he did not care how long the two men conversed but closed with the repeat admonition: "[j]ust please, as a favor to me, don't go to the scales while [Brooks is] working." (Tr. 333−337.)

A day later (on August 24) a disciplinary meeting was held regarding Brooks on an unrelated matter. The meeting was led by Stanley; Loy served as Brooks' steward, and First Line Supervisor Chad Baker attended as a witness for the company. After discussion of the disciplinary issue, Stanley said he needed to address another topic. He then told Brooks, "you can't have visitors at the scale house. I'm getting reports that you've had visitors at the scale house. You can't be conducting Union business on the clock." (Tr. 340−341.)[13] Three weeks later, Stanley was asked by Respondent's internal human resources investigator to explain his statement to Brooks. He responded that that Brooks had been "holding Union meetings in [his] work area on work time with employees from other areas" and further that "the other day someone was [at his work area] for 1.5 hours discussing grievances." (GC Exhs. 20, 22.)

At hearing, witnesses testified consistently that Respondent maintains no rule, policy, or past practice that broadly prohibits all non-work conversations among employees. Indeed, as Stanley testified, discussion of non-work topics is permitted, "[a]s long as we are working efficiently and it maintains within our ethics and our company policies…" Brooks also offered unrebutted testimony that routine, casual non-work exchanges with coworkers—such as congratulating someone on a child's graduation or wishing them happy birthday—were a common occurrence at the scale house. (Tr. 146, 279, 426, 518.)

2. Analysis

"In determining if [an employer's] statements constitute interference, restraint, or coercion, the Board applies the objective standard of whether the remark would reasonably tend to interfere with the free exercise of employee rights, and does not look at the motivation behind the remark, or on the success or failure of such coercion." *Dorsey Trailers, Inc*., 327 NLRB 835, 851 (1999) (citations omitted), enfd. in pertinent part 233 F.3d 831, 838−839 (2000). I find that the statements attributed to Whitaker and Stanley would reasonably tend to interfere with the free exercise of employee rights under Section 7 of the Act.

The filing of grievances unquestionably is protected concerted activity. *NLRB v. City Disposal Systems*, 465 U.S. 822, 836 (1984); see also *Roadmaster Corp*., 288 NLRB 1195, 1197 (1988), enfd. 874 F.2d 448 (7th Cir. 1989). Grievance-related activity conducted prior to the actual grievance filing is likewise protected concerted activity. Such activity may include investigating whether a grievance should be filed, assisting employees in writing up a grievance, and pre-filing handling of complaints. *Consumers Power Co*., 245 NLRB 183, 187 (1979) (steward unlawfully disciplined for using company time to informally investigate a disagreement which had not yet become a formal grievance).

[13] I based this recitation of facts on the testimony of Loy, whose recollection of events was sharp and unembellished. I do not credit Stanley's sanitized version, whereby he supposedly said, "you were conducting other than company business while you had a large backup. And we need to make sure that [are] focused on doing our job." (Tr. 521.)

Union officials such as Brooks and Loy obviously play an integral role in filing and processing grievances on behalf of other employees. The Act, however, requires a balance between an employer's business interests and the rights of union officials to engage in protected activities, and the Board will weigh the employer's justification for restricting union activities against the potential interference with employees' Section 7 rights. Restrictions that disproportionately chill union activity or lack a legitimate business justification may constitute unfair labor practices. *Consolidated Diesel Co. v. NLRB*, 263 F.3d 345, 352 (4th Cir. 2001) (citations omitted). Thus, an employer violates the Act by arbitrarily and without justification curtailing its practice of allowing grievance writing during working hours. *Mead Corp. v. NLRB*, 697 F.2d 1013, 1025−1026 (11th Cir. 1983). Likewise, arbitrary rules that interfere with union officials' ability to process grievances—such as requiring grievances to be written in unsuitable locations—violate Section 8(a)(1). Id.; *Caterpillar Tractor Co. v. NLRB*, 638 F.2d 140, 141 (9th Cir. 1981). Finally, an employer that issues threats to discourage grievance filing engages in unlawful coercion in violation of Section 8(a)(1). *Mead*, supra at 1024, 1025−1026 (unlawful to tell union steward, "you are going to have to stop filing these grievances because these people can really make it hard for you").

In the instant case, Respondent argues that its managers were justified in curtailing Brooks and Loy's grievance-processing activities because they were unreasonably interfering with operations at the scale house. The glaring problem with Respondent's position is that—despite having cameras installed at the relevant location—it failed to provide any credible evidence of the extensive backlog of trucks that supposedly threatened productivity on the day in question. Thus, the record discloses that Whitaker, without justification, forbade Loy from meeting with Brooks in person during work time (i.e., when he was posted to the scale house) to discuss grievance handling. Pursuant to the above-cited authority, this constituted an arbitrary rule requiring Loy and Brooks to conduct their grievance processing either by phone or away from Brooks' work area. Likewise, in the highly coercive context of a disciplinary meeting, Stanley categorically forbade Brooks for conducting Union business "on the clock." Each of these comments, in the absence of a proven business justification, directly interfered with the two union officials' Section 7 right to process grievances pursuant to the parties' collective bargaining agreement.

Accordingly, by forbidding Loy from meeting with Brooks in person during work time regarding grievance filing, and by forbidding Brooks from conducting Union business "on the clock," Respondent violated Section 8(a)(1) of the Act.

C. The Information Request Allegations

Between October 6, 2021, and March 7, 2023, Brooks made 42 written information requests to Respondent. Of these, the record establishes that Respondent failed to respond to 38 requests and delayed in responding to 4 of them. What follows is a summary of the requests. Because Board law treats requests for information regarding terms and conditions of bargaining unit employees differently from other types of information requests, the requests are delineated by these categories.

1. Facts

Primary responsibility for marshalling Respondent's responses to the Union's information requests—as well as for interacting with Brooks—fell upon Labor Relations Advisor Fields. Fields began his career with Respondent in 1999 as a trainee and was promoted in January 2009 to a first line supervisory position, a role he held until October 1, 2021, when he transitioned to become the Labor Relations Advisor role. At hearing, Fields readily admitted that his inexperience was at least partly to blame for Respondent's failure to respond to the Union's information requests, agreeing that he faced a "learning curve" in the new position. He also conceded that on occasion, various departments and individuals within the company did not respond to his efforts to gather information internally to provide to the Union. On these occasions, he testified, he actually enlisted the assistance of the Union by asking its Office Manager Pam Ayala to send him an "updated outstanding request" so that he could follow up with company officials. This was not always successful, however; he admitted that, on occasion, the individual in question simply never got back to him, resulting in him not providing relevant information. (Tr. 639–641, 654, 715–716.)

a. Requests seeking information regarding unit employees

Thirty-eight of the Union's requests sought information regarding bargaining unit employees. Of those, the record establishes that Respondent failed to respond to 34 of them, as summarized below:

Complaint	Information requested	Jt. Exh. 1
9(a)	On October 6, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. Please define what is meant by not expected to be in an emergency situation; ii. What metric or study did the company utilize or conduct to warrant such a statement; iii. Please provide all crafts, units, departments, jobs, roles, that would fall under the not expected to be in an emergency situation; and iv. Please provide all crafts, units, departments, jobs, roles that would not fall under the proposed changes to the clean shaven policy and would be required to be clean shaving.	1–3
9(b)	On October 15, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. Can you provide the areas/post/job assignments/roles in which would reasonably respond to an emergency and be required to don a tight fitting respirator at a moment's notice as determined by his/her supervisor? What exactly does it mean as determined by his/her supervisor; ii. Can you provide the amount of times that process was directed by his or her supervisor to don respirators and respond to an emergency in the past 4 years; iii. Does or is Process supposed to go into a/an emergency situations with respiratory equipment prior to emergency response personnel being on site; iv. Can you define as per this	1–3

Complaint	Information requested	Jt. Exh. 1
	proposed change what an emergency is or consists of; v. Is it the Compan[y's] position on this proposal that process/operations use of respirators is somehow different than that of mechanics? If so can you please explain in detail; and vi. Can you provide how the Company will consistently apply this proposed change given the "phrase" the immediate supervisor will have final authority for shaving or not shaving.	
9(c)	On November 1, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: i. Provide the entire investigation regarding [the employee's] alleged failure to respond in a timely manner. This is to include the actual trends and control valve/moves made during the event on 9/13/2021 with associated times of moves. This is to also include any alarm enforcer activities that occurred before or during [the employee's] shift; ii. Provide any and all technical communications regarding this particular OL as being obsolete or not needed. If there are any redundant indications for this particular level provide those points and their actual readings during the event; iii. Provide the total number of alarms [the employee] was dealing with at the time the company alleged [the employee] did not respond timely enough; and iv. Provide the procedure/policy the company refers to regarding the grace period for responding to OL alarms and provide the date [the employee] was trained in this procedure/policy.	4–5
9(d)	On November 1, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: i. Provide the complete work order history NXT 083 and 087 from January 1, 2018 until current. This is to include the date it was in bad order, the date it was repaired or replaced, and the actions that were taken to repair and or if it was replaced. This is to also include any current or active work orders that have been worked on as of the time or before this request was made; ii. Is NXT 083 and NXT 087 working currently as of the date of this request? If so, please provide the trends. If they are not working, provide how long it has not been working. Are there issues with these instruments during rain events and if so what actions have been taken or are in the plane [sic] to be taken to assure these are reliable even during rain events; and iii. Provide all discipline the company has issued to USW-represented employees alleging that they did not respond adequately or timely to alarms associated with these instruments.	6–7
9(e)	On November 8, 2021, and again on January 6 and March 10, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he	8–11

Complaint	Information requested	Jt. Exh. 1
	requested the following: i. All USW represented payroll records that are coded as DF from January 1, 2015 until current, including the employee's name; the date; the ERN code; the CRF code; and the schedule the employee is working. ii. Also include all documents, emails, and conversations between MOH, Lab management, and any other department regarding that of DF time.	
9(f)	On November 10, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following related to Grievance R20-84: i. Any documents related to any job search performed by the company concerning an available position within the grievant's restrictions; and ii. Any documents that relate to any attempt by the company to reasonably accommodate the restrictions placed on grievant.	12
9(g)	On November 10, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following related to Grievance R20-79: i. Any documents related to any job search performed by the company concerning an available position within the grievant's restrictions; and ii. Any documents that relate to any attempt by the company to reasonably accommodate the restrictions placed on grievant.	13
9(j)	On November 19, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to Labor Relations Advisor Patrick Fields, wherein she requested the following: i. Provide the date [the supervisor] verbally spoke to [the employee] about facial hair. Provide all documents recording this conversation. Also provide names of any witnesses to this conversation; ii. Provide the date the company revised/changed/unilaterally implemented SSS.3030; iii. Provide the date the company notified the Union of revision/change to SSS.3030; iv. Provide the date the company was contacted by the Union demanding to bargain this mid-term change and the date the company received the related information request; v. Provide any and all discipl[in]e for SSS.3030 alleged violation for any ExxonMobil employee from January 1, 2016, until current; vi. Provide the current unilaterally implemented version of SSS.3030 and the previous revision prior to the unilaterally implemented SSS.3030; and vii. Provide if the company clearly understands as documented on the oral reminder issued on November 3, 2021 to [the employee] that [the supervisor] issuing the discipline was NOT clean shaven.	18–20
9(k)	On November 19, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to Labor Relations Advisor Patrick Fields, wherein she requested the following: i. Provide Lenel	21–22

Complaint	Information requested	Jt. Exh. 1
	Badge records for [the employee] from July 1, 2021 until current; ii. Provide all payroll records for [the employee] from July 1, 2021 until current. This is to include date, shift, pay code, ERN code, etc .; iii. Provide the date, name of person who communicated and the communication method utilized by the company when it illegally terminated [the employee's] employment; iv. Provide the name of the company representative who approved the illegal termination and the dates those individuals approved the illegal termination of [the employee]; and V. Provide all documents utilized by the company to render its illegal termination to [the employee].	
9(l)	On November 19, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to Labor Relations Advisor Patrick Fields, wherein she requested the following: The medical file for [the employee].	23–25
9(o)	On November 30, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to then-Human Resources Director Joshua Lopez, wherein she requested the following: Contents of [an 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 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 her personnel file, this request is intended to cover those sources as well.	29–30
9(p)	On December 2, and 6, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to then-Human Resources Director Joshua Lopez, wherein she requested the following: ~~i. Voice mail or recording from [the employee] to the company on or about November 21, 2021~~;[14] and ii. Payroll record for [the employee] for November 17, 18, 19, and 20, 2021, to include pay codes, CFR and ERN codes.	31
9(r)	On December 9, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Advisor Patrick Fields, wherein he requested the following: i. Manpower sheets that include the scale desk/window post for 2021; ii. Names of those who are off on vacation on December 15, 16, 17. If not ExxonMobil employees, provide the company of which they are employed by; iii. All overtime worked by Scales Technicians on the scale desk for all 2021, this is to include name, date and shift; iv. The date that folks	32–35

[14] The struck information was, pursuant to the parties' stipulation, provided by Respondent on May 25, 2022. See Jt. Exh. 2 at ¶ 4. It is therefore included in the recitation of allegations of delayed provision of information below.

Complaint	Information requested	Jt. Exh. 1
	signed up and date that they were approved for vacation on December 15, 16, and 17; v. Procedure/policy that speaks to how contractors communicate to ExxonMobil vacation requests and how ExxonMobil either approves or denies such request and or how ExxonMobil approve contractor vacation requests and denies ExxonMobil employees leave regardless of type of leave requested by the ExxonMobil employee; vi. The names of all personnel contractor or ExxonMobil who are qualified on the scale desk as of the time of this request; and vii. The Contractor Handling Guidelines in its entirety.	
9(t)	On December 15, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. Provide the updated reimbursement form and associated procedure or policy, if not on the form and or policy provide the date they were revised; ii. Provide the names of all USW-represented employees who's [sic] reimbursement for safety shoes was rejected and the date it was rejected from January 1, 2018, until current, with this provide the reason for rejection [if] not included; iii. Provide what audit/concern/issue arose to drive the change to the form. Also provide any and all communications to Payroll regarding approval/rejection of the safety shoe reimbursement forms; and iv. Provide if not included in the policy what exactly happens when a safety shoe reimbursement is rejected. If an alleged rejection occurs late in the year and this is not corrected prior to the next year what does the reimbursement count in.	38
9(u)	On December 20, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. Provide all documents the company utilized to issue this evaluation to [the employee], i.e., Coaching & Counseling log, emails, etc .; ii. Provide all names and positions of other[s] who had input into [the employee's] evaluation; iii. Provide the process the company utilized to get others to participate including questions asked about [the employee's] performance. If this process was not hard copy or electronic, provide the date and time the supervisor spoke to the other[s] and his/her notes from those discussions; and iv. Provide how the company validated the information provided by others.	39
9(v)	On December 21, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: i. Please define what is meant by "not expected to be in an emergency situation"; ii. What metric or study did the company utilize or conduct to warrant such a statement; Please provide the metric, study or the risk	40–41

Complaint	Information requested	Jt. Exh. 1
	management techniques utilized to develop this proposed change; iii. Please provide all crafts, units, departments, jobs, roles that would fall under the proposed changes to the clean shaving policy and would be required to be clean shaven; iv. Provide the areas/post/job assignments/roles in which would reasonably respond to an emergency and be required to don a tight fitting respirator at moment's notice as determined by his/her supervisor; v. Does or is Process supposed to go into a/an emergency situation with respiratory equipment prior to emergency response personnel being on site; vi. Define as per this proposed change what an emergency is or consists of; vii. Is it the Company's position on this proposal that process/operations use of respirators is somehow different than that of mechanical? If so, can you please explain in detail; and viii. Provide how the Company will consistently apply this proposed change given the "phrase" the immediate supervisor will have the final authority for shaving or not shaving.	
9(w)	On January 3, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: Provide all API 755 Exceptions generated for USW wage represented employees by control center in the Chemical Plant as well as the Refinery, i.e.,: actual exception forms/documents for the following time periods: October l, 202l through December 31, 2021.	42–43
9(x)	On January 3, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: Provide all discipline including coaching and counseling, oral reminders, written reminders, DML's, terminations issued in the areas listed below for all USW represented employees from October 1, 2021 through December 31, 2021. This is to be per area, this is also to include the actual documentation i.e., Coaching & Counseling, Oral reminder, written reminder, DML, termination letter etc. This is to also include per area the number of needs improvement as well as unsatisfactory PACD's for the USW represented employees of the areas and shall cover the same time period of October 1, 2021 through December 31, 2021. [List of specific locations omitted.]	44–46
9(y)	On January 11, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: i. Provide the name of the USW representative who was on the most recent MPU Fire Investigation and the area this person worked in; ii. Provide the name of the USW representative who was on the Melissa Sumrall Injury Investigation at BAPP and the area this person worked in; iii. Provide the name of the USW representative who was on the LECC	47

Complaint	Information requested	Jt. Exh. 1
	COVID- 19 outbreak and the area this person worked in; and iv. Provide the name of the USW representative who was on Fuels North COVID- 19 outbreak investigation and the area this person worked in.	
9(bb)	On January 13, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Respondent Human Resources Joshua Lopez, wherein he requested the following: i. Provide all USW-represented employees; this is to include the Refinery, Chemical Plant and Lab, all [Holiday Bonus (HB)] and [Holiday Floater (HF)] payroll data for fiscal year 2021; a. This is to include name, date HB or HF was paid; and b. If any of the USW-represented employees have less than 10 in 8 HB and 2 HF provide the reason the company failed to pay the employees for 10 holidays. ii. If HB or HF was paid on a date and the employee worked that same date, provide the payroll date for the hours and pay codes utilized, CFR and ERN codes utilized on the same date as the HB and/or HF was paid; a. And also provide the schedule for USW-represented person who was paid either HB or HF and also paid for working in that day works.	53
9(dd)	On January 21, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. If the Company is going to make this right, please send to the Union any and all corrections that are to be made dating back to the point the parties began having this issue; ii. Also document to the Union how the Company will assure that the employees selection of floating holiday is administered per the CBA; iii. How the Company will assure that all floating holidays worked by all USW- represented employees be paid per the CBA; iv. If the Company is of the position that there is contractual language or provisions that allow the company to withhold holiday bonuses for those who are not on a leave of absence as defined by the CBA or who are lab employees who have exhausted their disability benefits and if a holiday floater is not used then it is lost, then the Union request that the Company provide these provisions to Union in writing; and v. Detail the implications to the pensionable pay if the Company withholds or does not pay holiday bonuses to USW-represented employees for the year in which they are contractual due 10 holiday bonuses.	59–63
9(ff)	On February 4, 2022, the Charging Party, through Union President Ricky Brooks, by fax and by mail sent an information request to Baytown Area HR Manager Erik VanDuivendyk, wherein he requested the following: i. Provide payroll records for [the employee] for September 2021 to include date, pay code, ERN code	67

Complaint	Information requested	Jt. Exh. 1
	and CFR code; and ii. Provide total number of paid HB/HF for [the employee] for fiscal year 2021.	
9(gg)	On March 18, 2022, the Charging Party, through Union Office Manager Pamela Ayala, by email sent an information request to Baytown Area HR Manager Erik VanDuivendyk, wherein she requested the following: i. Provide all USW-represented employees who did not receive their progression raise based on years of service on their anniversary date; and ii. For all employees above provide all the payroll records for each person from the day before their respective anniversary date until current and or until the day after the company had corrected their pay as per the CBA. This is to include name, ERN code, CFR code, date, shift, number of hours worked, any paid NPT codes, i.e. vacation, disability, holiday and any no pay codes and or hours.	68
9(hh)	On April 21, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. The folks who are not represented in your note above are they all classified as supervisors by the Company? If not, can you provide how they are classified by the Company? ii. Can the Company give a more detailed version of its proposal. To be clear here is it the Company's proposal to have non represented personnel preform roles/work of SPOT, FAST, SAI? If the answer to this is NO, please explain in detail the Company's plan to administer this in a fashion that non represented employees are never assigned SPOT, FAST, SAI roles/work. If the answer is YES, provide in detail the additional work/roles the USW Represented employees will take on/be responsible for under the Company's mid-term proposal. If possible, provide in detail the Company's proposal broken down in shift/day perspective. As an example the first 3 hours of the shift/day SAI auditing, the next 3 hours of the day SOI audits and the remainder of the shift/day LPS exercises and discussions. iii. Also provide the current roles/responsibilities for the SOI auditors as well as the LPS advisors. The Union has the roles and responsibilities for the SAI Coaches but if something has changed in the version the Union presented at the last face to face meeting please provide the revised roles and responsibilities for the SAI Coaches. iv. Provide who the SAI Team Lead is currently. v. In the Company's note above it would appear that there are 7 folks and the Company's mid term proposal also states that there will be a minimum of 2 USW Represented when currently there are 4 USW Represented. Is it the Company's proposal to replace at least 2 of the 4 USW Represented employees with non represented employees? The Company's proposal also states that there will be one team lead	69–71

Complaint	Information requested	Jt. Exh. 1
	for the company's mid term proposed team. Who is the Team Lead the Company is proposing? Is it the Company's proposal that the Team Lead will always be a non represented employee? vi. Provide the duration of the assignment to this mid term company proposal. vii. Provide how selections are made to this mid term company proposal. viii. Provide how removal from the mid term company proposal are initiated and handled. ix. Provide which 2 of the USW Represented employees will be/could be removed. While the Union understands the Company documented minimum 2 USW Represented employees on the team provide the Company's detailed proposal for the numbers on this mid term company proposal. Currently again there are 4 USW Represented employees on these three individual/separate teams, is it the Company's proposal to reduce from 7 to 5, thus leaving only 2 USW Represented employees on the Company mid-term proposed consolidated team?	
9(ii)	On April 21, 2022, the Charging Party, through Union Office Manager Pamela Ayala, by email sent an information request to Baytown Area HR Manager Erik VanDuivendyk, wherein she requested the following: 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 [the employee's] employment in any other place in additional to his personnel file, this request is intended to cover those courses as well.	72–73
9(jj)	On June 20, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. Provide the entire investigation which prompted the Unjust Termination of the [the employee]. This is to include all witness statements, any and all procedures and policies applicable to the investigation. The names of the investigators, the date the investigation began as well as the date it concluded. Copies of all evidence the investigation team gathered/reviewed. A complete copy of all records pulled by the investigators as well as produced by the investigators. ii. Provide exactly what the company is claiming [the employee] allegedly lied about. iii. Provide the company 2010 proposal regarding Business Code of Conduct documents. Also provide what was ultimately agreed to by the parties.	74–75
9(kk)	On July 11, 2022, the Charging Party, through Union Office Manager Pamela Ayala, by email sent an information request to	76–77

Complaint	Information requested	Jt. Exh. 1
	Baytown Area HR Manager Erik VanDuivendyk, wherein she requested the following: Provide all discipline including coaching and counseling, oral reminders, DML's, terminations issued in the areas listed below for all USW represented employees from April 1, 2022 through June 30, 2022. This is to be per area, this is also to include the actual documentation i.e., [sic] Coaching & Counseling, Oral reminder, written reminder, DML, termination letter etc. This is to also include per area the number of needs improvement as well as unsatisfactory PACD's for the USW represented employees of the areas and shall cover the same time period of April 1, 2022 through June 30, 2022. [List of specific locations omitted.]	
9(ll)	On August 11, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: BOSS manpower from July 2022 to August 11, 2022… to include all qualified scale window individuals and their assignments and or off time of the same period.	78–81
9(mm)	On September 1, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. What the Employer expectations are when an employee is instructed to "self- train" when no trainer is available on Post; ii. Whether an employee who is instructed to self-train when no trainer is available on Post is to leave their assigned Post and go to another Post to self-train; iii. What period of time is allotted or expected for self-training; iv. The GMT module/document and/or training procedures/policies related to training on Process Post in the BTCX; v. All documents provided to USW-represented employees when the employee is instructed to self-train; vi. How the Employer grades and/or monitors self-training on Process Operations Post/positions; and vii. Who signs off on or verifies self-training competency.	82
9(nn)	On September 20, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. The name of the app that is used for inputting steam leaks and/or generating notifications; ii. How long the app has been active (i.e., the go live or active date of the App for the BTCX); iii. A list of all USW-represented employees who have been trained on the app; and iv. Any communications to USW-represented employees that not inputting steam leaks in the app and generating notifications is grounds for disciplinary action.	83
9(qq)	On October 7, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. The	92

Complaint	Information requested	Jt. Exh. 1
	email/note/written communication sent out by Mike Fullen regarding cell phone/Itrac requirement to be with the process techs in the field and data inputted into the cell phone/Itrac while at the piece of equipment being inspected; and ii. The detailed/comprehensive all-inclusive mid-term proposal regarding that of cell phone/Itrac field usage requirement.	
9(rr)	On November 1, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. Under Digital Tool Usage the Company documents that the Unit submits their digital tool usage. Provide each Unit's digital tool usage that was submitted; ii. What is meant by, as well as how, the judges spot check operators for phone usage. Is this a question or is this an observation ?; iii. What is meant by iPhone use in field, Fat Finger usage, Steam leak app. Is this questions or observations or time stamping inspections of data entered into the apps/system and is it all inclusive or separated to iPhone in field usage, or just Fat Finger field usage, or just Steam leak app field usage; iv. Provide what Team Qas is; v. All of the Unit housekeeping audits and all Team Qas's turned into the judges as of the date of the request for information, also augment the request as other housekeeping audits and Team Qas's are supplied to the judges/assessors; vi. What is meant by the statement "Lipstick on a pig deduct point." Provide what level of deduction of points is applied or the calculation utilized to determine point deduction by the judges/assessors; vii. Prior to the competition, provide the system that tracked/inspected/judges/graded iPhone use in the field, Fat Finger usage, Steam Leak app usage, digital tool usage, and, if in existence, provide the results of such for each BT. viii. The names of 9 judges/assessors and documents assessment will include field visit scores from all assessors. Do all 9 assessors do field visits at the same time or will all 9 assessors do assessments at different times for each BT included in the competition and then combine all 9 assessors scores of the area? If the latter, what offset or calculation is utilized to offset any early assessments by some of the 9 assessors which may not have been great and then later assessments in which, based on the first assessments, corrections/modifications were made by the BT for the sake of improving their score and ability to progress in the bracket as laid out in the competition; ix. Any and all assessments that have been completed by the assessors at the time of the request for information and augment with each assessment that is completed. This is to include the BT assessed, the score and the names of the assessors and the date the assessment/judging occurred and the scoring sheets from each assessor/judge; x. The procedure/policy that governs/directs/explains "Company	93–94

Complaint	Information requested	Jt. Exh. 1
	Complaint" side wagers. Provide what is meant by the statement of side wagers (company complaint) highly encourages; xi. Any and all side wagers that are known about by the judges/assessors at the time of the information request and augment the request each time the assessors/judges or organizer is made knowledgeable of side wagers moving forward; xii. What areas, if not included above, were judged/assessed on 9/25/22 and what areas were judged or assessed during the last week of October 2022 and what areas are scheduled to be judged/assessed the last week of November and December 2022 ?; xiii. The complete list of BT/units and their anticipated judge/assessed date for 2023; xiv. Are the assessments done the first or last week of each month?	
9(ss)	On December 20, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: Copies of all overtime guidelines for each area.	95–98
9(tt)	On December 22, 2022, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. Overtime and vacation guidelines for process, mechanical and labs; ii. Any and all forced overtime placed in the manpower or on the 2022 live-in list; iii. Names of any and all USW represented employees' [sic] whose vacation, AN (no-pay days) time, and HF (holiday floater), and shift trades were cancelled; iv. Minimum staffing for the 2022 freeze for each process area; v. Communications for all process areas for that of on-call lists; vi. On-call procedure; vii. Communications to the Union regarding employees going to on-call process; viii. Compensation to USW represented employees when placed on call; ix. Response time and requirement for response if placed on the on-call list; x. What was communicated to those placed on the on-call list as to requirements or expectations when on call; xi. Manpower sheets for each process area for December 22-25, 2022; xii. How forced/mandatory overtime was assigned; xiii. Complete Sharepoint site for 2022 freeze staffing; xiv. Base USW staffing.	99–101

Respondent, it is alleged, failed to provide the information requested in all but 4 of the requests for bargaining unit employee information: those set forth in complaint paragraphs 9(h), 9(m), 9(p)(i)[15] and 9(z). With respect to those, Respondent provided responsive information,

[15] The parties' stipulation regarding Respondent's response to this request incorrectly referred to complaint paragraph 9(q)—apparently an inadvertent reference to the allegation as stated in the prior, May 6, 2024 complaint. See Jt. Exh. 2 ¶ 4.

albeit only after the respective period of delay indicated in brackets below. See Jt. Exh. 1 at 17, 49–52; Jt. Exh. 2.

9(h)	On November 16, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to Labor Relations Advisor Patrick Fields, wherein she requested the following: i. Provide all documents that speak to [the employee] not being viewed as a team player. Also provide names of people who gave this opinion; ii. Provide why [the employee's] Union activity is relevant and/or documented in this mid-term unilaterally never agreed upon performance evaluation; iii. Provide any and all documents that speak to or allege issuing permits has been difficult in a timely manner; iv. Provide the names of all other scale techs qualified people that issue permits while working the scale window; v. Provide all documents and/or conversations and names of those who supplied information that of shift paperwork if left for relief; vi. Provide all documents and/or evidence supporting that missing paperwork from security off shift occurs when [the employee] relieves them; vii. Provide all documents and/or video footage in which it is clear that Mr. Brooks did not resolve sensor issues prior to notifying the supervisor; viii. Provide dates and documents in which [the employee] was resistant to feedback and coaching and showed resistance to change, new idea, and/or improvements are being referred here; ix. SAP outage day, please provide if [the employee] followed the procedure for SAP outage. In following the procedure is [the employee] instructed to notify the FLS and also have a second person to assist with back bills. Also provide who was the coordinator/scheduler that day and if they did and/or knew what to do; X. Who are all of [the employee's] team member [sic] and specifically who all gave data that [the employee] was not valued; xi. Provide the HCF and Lube and Waxes truck schedule for every shift [the employee] has worked from October 1, 2020 until current; and xii. Provide the SAP report for each shift [the employee] worked from October 1, 2020 until current.	14–16 [3 months, 15 days]
9(m)	On November 19, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to Labor Relations Advisor Patrick Fields, wherein she requested the following: 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 [the employee's] employment in any other place in additional to his personnel file, this request is intended to cover those courses as well.	26–28 [2 months, 18 days]
9(p)	On December 2, and 6, 2021, the Charging Party, through Union Office Manager Pamela Ayala, sent an email to then-Human Resources Director Joshua Lopez, wherein she requested the following: i. Voice mail or recording from [the employee] to the company on or about November 21,	31 [5 months, 23 days]

	2021; ~~and ii. Payroll record for [the employee] for November 17, 18, 19, and 20, 2021, to include pay codes, CFR and ERN codes~~.[16]	
9(z)	On January 11, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Joshua Lopez, wherein he requested the following: Provide all manpower sheets for Extractions from January 1, 2021, till current.	48 [6 months, 3 days]

b. The requests for information regarding non-bargaining unit employees

As noted, four of the information requests sought information related to non-bargaining unit employees. Three of those concerned individuals known as pollution safety advisors (known as PSAs) and dockworkers. PSAs are responsible for oversight of pollution and safety concerns, while dockwalkers are tasked with walking the docks in connection with barge movements, monitoring temperatures, checking levels, and confirming the sealing of barges before departure. Each of these positions, at the time the requests were made, was performed by a non-bargaining unit, non-Exxon Mobil employee.

Brooks testified that he made the requests for information regarding the terms and conditions of employment of PSAs and dockwalkers after learning that Respondent planned to transfer their work to bargaining unit employees. As he explained, the requests were driven by the union's interest in understanding the scope and history of the new roles bargaining unit employees were to be assigned. (Tr. 157–159.) Those requests were as follows:

Complaint	Information requested	Jt. Exh. 1
9(s)	On December 9, 2021, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relatives Advisor Patrick Fields, wherein he requested the following information, which included an information request dated November 13, 2021: i. November 13, 2021 Request: 1. Provide the contract between ExxonMobil and SeaRiver for that of the work performed by the contractor whom [sic] performs PSA work/activities. This request is for the entire agreement. If a confidentiality agreement is required, please submit the company's proposed confidentiality agreement for the Union to review; 2. Provide a complete list if not included in the contract information requested of the PSA's job duties and responsibilities and qualifications and or credentials to fulfill this role; 3. Provide the date in which PSA's became part and or active at the Baytown Docks; 4. Provide in detail the proposed training the company communicated to the Docks employees at a SWPT meeting on 11/12/2021 in which the company claims will qualify the Dockmen to take over the PSA roles and responsibilities; 5. Provide in its entirety DOK 240; 6. Provide the date in which the company began discussing the midterm change to have USW-	36–37

[16] Further to footnote 12 above, the struck information was not provided by Respondent.

Complaint	Information requested	Jt. Exh. 1
	represented employees take over PSA roles and responsibilities; and 7. Provide any meeting notes, emails, instant messages between company agents and or the contractor who currently provides the PSAs to the Baytown Docks regarding that of a potential change to have USW- represented employees take over PSA roles and responsibilities. ii. December 9, 2021 Request: 1. Provide the total annual cost for the services of Dockwalkers charged to the ExxonMobil Baytown Docks for fiscal year 2010 until current; 2. Provide the total number of PSA's assigned to and working at the Baytown docks for fiscal year 2010 until current; 3. Provide the total number of Dockwalkers assigned to and working at the Baytown docks for fiscal year 2010 until current; 4. Provide the retention period of PSA and Dockwalker reports generated at the ExxonMobil Baytown Docks; 5. Provide all PSA and Dockwalker reports generated at the ExxonMobil Baytown Docks that are currently retained and have not been discarded; 6. Provide the contract between ExxonMobil and or SeaRiver for that of the work performed by the contractor whom [sic] performs Dockwalker work/activities. This request is for the entire agreement. If a confidentiality agreement is required, please submit the company's proposed confidential agreement to the Union for review; 7. Provide a complete list if not included in the contract information requested above (item 6) of the Dockwalkers' job duties and responsibilities and qualifications and or credentials required to fulfil this role.	
9(cc)	On January 19, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, where he requested the following: i. List of all procedures in which the Company is revising for the midterm unilateral change and clarified that the Union is requesting a list of all procedures in their current form as well as procedures in their revised form; ii. The Global contract that [Docks Manager Pat] Brown mentioned to Fields in Brown's January 12 email; and iii. The complete contract between ExxonMobil Baytown and the contract company that provided the PSA and Dock Walkers but given that Brown stated on January 12 that SeaRiver will be converting to Global contract, the Union is requesting the Global Contract.	54–56
9(ee)	On January 24, 2022, the Charging Party, through Union President Ricky Brooks, sent an email to Labor Relations Advisor Patrick Fields, wherein he requested the following: i. Budget for the docks in the past 5 years; ii. Total cost the company planned in the budget for PSA and Dockwalkers; iii. Actual cost per fiscal year for the PSA and Dockwalkers services; iv. If the ExxonMobil Procurement Contract or Global Contract increased cost please again provide the contract between SeaRiver and the Employer Baytown Refinery that	64–66

Complaint	Information requested	Jt. Exh. 1
	was requested months ago; and v. Provide the ExxonMobil Procurement Contract or Global Contract in their entirety.	

Brooks also made a multi-item request for information related to an expansion project known as "BCEP" that involved Respondent bringing in workers from outside of the Baytown complex to perform bargaining unit work. Brooks made the request after learning from unit members that employees from another Exxon Mobile facility were working at the Baytown facility. Prior to making the request, he engaging Fields in a lengthy back-and-forth email exchange in which he accused Respondent of unilaterally assigning bargaining unit work to non-unit employees; at various points in the exchange, Fields admitted that this was, in fact, occurring. (Jt. Exh. 3 at 1–36.) As Brooks explained at hearing, he then sent the information request in order to determine whether these individuals were "working under our contract, our rules, or were they under somebody else's rules…" (Tr. 164–165.)

The request read as follows:

9(uu)	On March 7, 2023, the Charging Party, through Union President Ricky Brooks, by email sent an information request to Labor Advisor Patrick Fields, wherein he requested the following: i. When did BRPP ees arrive in Baytown? ii. What are the names of BRPP employees? iii. What are the pay rates of BRPP employees? iv. Are there any wage employees from other sites planned to come to Baytown to do bargaining unit work; if so, provide names, locations and pay rates for them. v. Date the BCEP project started the 14-2 schedule and a list of all USW represented employees and other wage employees who are assigned to this schedule; this is for ISBL and OSBL; vi. Provide what teams 1 and 2 or 3 and 4, the folks on this 14-2 schedule, will be following for purposes of calculating overtime and WP days; vii. Provide any and all changes from this 14-2 schedule, including the date the schedule changed and for what individual(s) it was changed. This is for ISBL and OSBL. viii. All manpower sheets for the BCEP project for all positions/posts/ assignments from the beginning of the project until the receipt of the info request; for ISBL and OSBL; ix. Each USW represented employee's schedule at BCEP, to include the chart they are assigned to the schedule 14-2, 4-4, 4 10 hour shifts days only 5-8 etc …; x. Any and all shift/chart changes Team 1 to Team 3, mechanical days to nights, etc, including the date the change was made and the name of the USW employees whose shift/chart changed; xi. A complete list of all ExxonMobil wage employees doing/assigned USW represented work at BCEP that are from other sites, states, countries, to include the employees' name, the date they arrived and began work at BCEP, the site/state/country they came from, the hourly wage rate and if applicable the CBA or wage agreement at their normal work site.	102

2. The volume and redundancy of the requests

At hearing, Respondent failed to adduce evidence that it had, in fact, timely responded to the requests. Rather, it contends that it was not obligated to do so because each of the requests was made in bad faith in order to "harass the Company and to justify the Union's refusal to meet on grievances." According to Respondent, this strategy involved making requests that "in many cases. . .seek an unnecessary, voluminous amount of information." (R. Br. at 34.)

In support of this defense, Respondent relies chiefly on the testimony of Fields, who testified regarding the burdensome volume and repetitive nature of the Union's information requests at Baytown compared to other similar facilities operated by Respondent. According to Respondent, Brooks filed more than twice as many grievances and three times as many information requests as its "three other largest refineries combined." (R. Br. at 34–35.) In total, Fields estimated that Brooks filed close to 300 grievances within a 2½ year period, about 90% of which were accompanied by information requests. Brooks did not dispute the high volume of requests,

admitting that he regularly files over 100 grievances per year, most of which are accompanied by an information request. (Tr. 280, 640−643; 647−648.)

Fields further testified that Brooks' information requests often included multiple, near-identical requests received regarding topics such as drug testing, vacation policy and vehicle tracking (called "Geotab"). He testified that he received redundant requests regarding the Geotab system and vacation policy issues, at times seeking the same information within a few weeks or even a month and a half of each other. Such requests, he testified, caused extensive additional work, made it difficult to respond in a timely manner and made it difficult to respond to other, relevant, non-repetitive requests. (Tr. 649−654.) Of the information requests alleged in the complaint, however, none sought information regarding drug testing or any form of vehicle tracking, including Geotab, nor did Respondent introduce any such information requests into evidence.

With respect to vacation pay, the record evidence shows that Brooks did request, in December 2021, that Respondent provide policies and procedures how Respondent handled vacation requests by contractor employees versus bargaining unit members. A year later, in December 2022, he requested that Respondent "provide the overtime and vacation guidelines for each Process area and Mechanical area and Labs." Fields testified about two other allegedly redundant requests for vacation pay information in the context of the parties' collective bargaining but Respondent offered no documentary evidence of these requests. (Jt. Exh. 1 at 32, 100; Tr. 650−651.)

Despite Respondent's insistence that each of the information requests at issue was unduly burdensome, excusing it from responding, my review of the record uncovered only a single instance in which Fields (or any other Exxon Mobil representative) explicitly informed the Union that the company considered an information request to be overly broad and/or unduly burdensome. On March 3, 2022, in response to a request for definitions and examples related to performance assessments, Fields stated:

> As to your numerous requests for definitions and examples, the Company objects to these requests because they request information that is not relevant, the requests are overbroad and unduly burdensome. In addition, the assessment criteria are self-explanatory, and the information that you requested is determined by supervisors on a case-by-case basis and cannot be defined in this response.

(Jt. Exh. 1 at 17.) However, there is no evidence that he made a timely offer to cooperate with the Union to reach such an accommodation.

On another occasion, Fields articulated objections to a multi-item information request regarding an employer proposal for a "operator care competition," stating:

> [W]hen I get the requested info, I send it. You have very robust info request that requires a lot of time from various people so when

> they can gather it, get it to me, I will forward it. Some of the answers to these the [sic] questions below you already have the answers to.

(Jt. Exh. 1 at 84.) These responses demonstrate that, despite being newly appointed to the Labor Advisor position, Fields was entirely capable of enunciating objections to what Respondent perceived to be improper information requests.

3. The legal standards

a. The duty to provide information

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith, including furnishing relevant information upon request. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). As such, "'[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act' without regard to the employer's subjective good or bad faith." *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012) (citing *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979)).

b. The relevance standard

"A union's bare assertion that it needs information ... does not automatically oblige the employer to supply all the information in the manner requested." *Detroit Edison,* 440 U.S. 301, 314 (1979). Instead, "[t]he union's need and the employer's duty depend, in all cases, on the 'probability that the desired information [is] relevant, and that it [will] be of use to the union in carrying out its statutory duties and responsibilities.'" *N.Y. & Presbyterian Hosp. v. NLRB*, 649 F.3d 723, 729–730 (D.C. Cir. 2011) (quoting *Oil, Chem. & Atomic Workers*, 711 F.2d 348, 359 (D.C. Cir. 1983)). The requisite showing of relevance depends on whether the union is requesting information about employees who are part of the bargaining unit or outside it. "For information about employees in the bargaining unit, it is presumed that the requested information is relevant ..., and the employer must provide the information unless it can show the information is irrelevant." *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 19 (D.C. Cir. 1998).

However, where the requested information does not pertain to unit employees, it is not presumptively relevant, and its relevance must be established. As the Board has explained:

> To demonstrate relevance of nonunit information, the Acting General Counsel must show that either: (1) the union demonstrated the relevance of the nonunit information; or (2) the relevance of the information should have been apparent to the employer under the

> circumstances. *Disneyland Park*, 350 NLRB 1256, 1258 (2007) (citing *Allison Co*., 330 NLRB 1363, 1367 fn. 23 (2000)); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018-1019 (1979), enfd. in relevant part 615 F.2d 1100 (5th Cir. 1980). The Union cannot simply rely on generalized conclusory explanations, hypothetical theories, or ""mere suspicion." *Disneyland Park*, 350 NLRB at 1258 fn. 5; *Sheraton Hartford Hotel*, 289 NLRB 463, 463–464 (1985). The burden of establishing relevance for nonunit information, however, is not "an exceptionally heavy one." *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011). Rather, the Board uses a "liberal discovery-type standard." *Acme Industrial Co.*, supra, 385 U.S. at 437 & fn. 6. Thus, under this standard, all that is required is a showing of a "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Id. at 437; see also *United States Testing Co.*, 324 NLRB 854, 859 (1997), enfd. 160 F.3d 14 (D.C. Cir. 1998); *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Additionally, under longstanding Board precedent, a union is not obligated to disclose to the employer the facts supporting its claim of relevance at the time the information is requested. See, e.g., *Cannelton Industries*, 339 NLRB 996, 997 (2003); *Brazos Electric Power*, 241 NLRB at 1018-1019. "Rather, it is sufficient that the Acting General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief." *Cannelton Industries*, 339 NLRB at 997 (citing *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988)).

Centurytel of Montana, Inc., 373 NLRB No. 128, slip op. at 4 (2024).

c. The unreasonably delay standard

Absent evidence of justification, an unreasonable delay in furnishing relevant information is as much a violation of Section 8(a) (5) of the Act as a refusal to furnish the information at all. *PAE Aviation and Technical Services, LLC*, 366 NLRB No. 95, slip op. at 3 (2018). It is an employer's duty to furnish relevant information as promptly as possible, given the circumstances, as a union is entitled to the information at the time the information request is made. Id. In determining whether a party has failed to produce information in a timely manner:

> the Board considers a variety of factors, including the nature of the information sought (including whether the requested information is time sensitive); the difficulty in obtaining it (including the complexity and extent of the requested information); the amount of time the party takes to provide it; the reasons for the delay in providing it; and whether the party contemporaneously communicates these reasons to the requesting party.

General Drivers, Warehousemen & Helpers Local Union No. 89, 365 NLRB 1605, 1606 (2017).

Although no per se rule exists to say what constitutes an unreasonable delay, the Board has found delays from two to seven weeks to be unreasonable. See *Capitol Steel & Iron Co.*, 317 NLRB 809 (1995) (two weeks unreasonable), enfd. 89 F.3d 692 (10th Cir. 1996); *Aeolian Corp.*, 247 NLRB 1231, 1245 (1980) (three weeks unreasonable); *Postal Service*, 308 NLRB 547, 551 (1992) (four weeks unreasonable); *Postal Service*, 332 NLRB 635, 640 (2000) (five weeks unreasonable); *Linwood Care Center*, 367 NLRB No. 14, slip op. at 5 (2018) (six weeks unreasonable); *Woodland Clinic*, 331 NLRB 735, 737 (2000) (seven weeks unreasonable).

D. The bad-faith and related defenses

An employer charged with failing to provide requested information to a union may raise an affirmative defense that the union's request was made in bad faith, and Board law is settled that, if the only reason a union requests information is harassment, an employer is not required to comply with the request. *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990). However, where a union's information request is made for at least one proper and legitimate purpose, the good faith of the request is established. Id.; see also *Mission Foods*, 345 NLRB 788, 788 (2005); *Ormet Aluminum Mill Products*, 335 NLRB 788, 805 (2001); *Hawkins Construction Co*., 285 NLRB 1313, 1314 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1988).

Even absent a union's bad faith, an employer does not commit an unfair labor practice by failing to produce material which is cumulative of information already produced. *International Paper Co. v. NLRB*, 115 F.3d 1045 (D.C. Cir. 1997). Moreover, where an employer maintains that a request for information is unduly burdensome or overbroad, it must articulate those concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation. *UPS*, 362 NLRB at 162; *Mission Foods*, 345 NLRB at 789. Correspondingly, where an employer fulfills those obligations, the union may not ignore the employer's concerns or refuse to discuss a possible accommodation, even when the requested information is presumptively relevant. *Emeryville Research Center v. NLRB*, 441 F.2d 880, 885 (9th Cir. 1971); *American Cyanamid*, 129 NLRB at 684.

3. Analysis

a. The information sought was relevant.

The Acting General Counsel established the relevance of the information sought by Brooks. As noted, the vast majority of the requests sought information regarding terms of conditions of bargaining unit employees and was therefore presumptively relevant. Moreover, the remaining requests sought to police the parties' collective bargaining agreements—in one case, to protect the scope of bargaining unit work and in the remaining three requests, to inform the Union's bargaining over the terms and conditions of employment that would apply to unit members being assigned new positions. The relevance of such information was not only readily apparent from the face of the requests themselves, but it each case, Brooks' communications to Fields

demonstrated the relevance of the nonunit information. See *Centurytel of Montana,* 373 NLRB No. 128.

b. Respondent's delay was unreasonable.

Assessed by the Board's standards, Fields' belated response to four of Brooks' requests were not reasonable. He took over two months to provide a copy of an employee's personnel file and over five months to provide a single voicemail recording. After Fields requested a year's worth of "manpower sheets" for a particular department, Respondent failed to respond for over six months and only then responded after the Union filed an unfair labor practice charge over the request. After Fields notified the department that the NLRB was involved, he was forwarded the requested documents within 5 minutes and sent them to Brooks the following day. On an admittedly more complex request, Fields' single-page response took over 3 months. See Jt. Exh. 1 at 17, 49–52; Jt. Exh. 2.

On the whole, the evidence reflects that Respondent failed to make a diligent effort to obtain and promptly provide the requested information in a reasonably timely manner, which may be equated with a flat refusal. *Shaw's Supermarkets,* 339 NLRB 871, 875 (2003) (citing *NLRB v. John C. Swift Co.*, 124 NLRB 394 (1959), enfd. in part and denied in part 277 F.2d 641 (7th Cir. 1960)).

c. Respondent's bad-faith and related defenses fail.

I do not find merit to Respondent's claims that each of the information requests was made in bad faith. In the Eighth Circuit case on which it relies, the union made repeated, voluminous requests for detailed information about every subcontract entered into by the employer, admittedly seeking "to overburden the employer with information requests so as to prevent the employer from subcontracting any work to nonunion workers" even though subcontracting was permitted under the parties' contract. See *NLRB v. Wachter Constr*., 23 F.3d at 1386–1387. Even if the Eighth Circuit's standard for a bad-faith information request were controlling authority—which it is not—Respondent's reliance on it is misplaced, as there is no evidence demonstrating that Local 13–2001 used information requests in furtherance of an untoward goal. Rather, Respondent claims that Brooks conjured up requests on multiple and varied issues for the purpose of harassing the company, period. This position is both logically dubious and unsupported by the record.

As a preliminary matter, Respondent's claim that Brooks flooded Fields with multiple redundant requests was not borne out by the record. In fact, the evidence was limited to Brooks having made two requests, over a year apart, regarding vacation pay issues. Also scant was evidence of Brooks' requesting information the Union already possessed: on a single occasion, Fields alluded to this, noting that Brooks already had "some of the answers" to questions he posed about the operator care competition. These isolated occurrences certainly did not render Brooks' requests categorically improper.

Likewise, Respondent's emphasis on the sheer volume of requests also fell short of justifying its failure to provide requested information. Even relying on Brooks' admission that he likely

filed over 100 grievances per year, the majority of which accompanied by an information request, this does not strike me as an especially high number of requests. As the exclusive bargaining representative of approximately 1,000 employees at the Baytown facility, the Union has a duty to represent them, including by staying appraised of myriad issues that affect their work lives. It is therefore not surprising that Brooks' admittedly detailed requests sought information on a wide array of workplace terms and conditions (including discipline, pay practices, staffing, manpower, scheduling, leave, overtime, employee benefits, training, health and safety practices, and injury/incident investigations); information used to evaluate and process grievances (such as personnel files and performance evaluations); and information to inform and support negotiations and/or police of the parties' contracts (including evaluating proposed outsourcing plans and changes to work rules and policies).

A similar case is informative on this issue. In *West Penn Power Co*., the employer claimed that the union's bad faith—evidenced by the fact that it made 82 information requests concerning 43 different subjects over a 19-month period—excused its failure to comply with certain of them. The Board, followed by the court of appeals, disagreed, with the latter stating:

> A review of the list of the requests reveals that they sought information on a broad range of legitimate subjects implicating the Union's duty to represent its members. Specifically, the Union requested information on subjects including pension coverage, safety issues and accidents, employee evaluations, disciplinary issues, underground training, workers' compensation procedures, clothing issues, safety equipment costs, tool repair, and vacation and sick pay. When considered in context, the number of requests over the particular time span (1999-2000) is hardly surprising. The Union represented 1200 members at over thirty locations in four states.

394 F.3d 233 (4th Cir. 2005). The same logic applies here: effective representation of a large number of employees necessarily involves staying abreast of the issues they face, justifying requests for information that might not be necessary for smaller units. See, e.g., *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77 (2d Cir. 1969) (citing *Standard Oil Company of California v. NLRB*, 399 F.2d 639 (1968)).

Nor am I persuaded that Brooks' requests were overly broad or unduly burdensome. As noted above, an employer flooded with overbroad or unduly burdensome requests may raise an objection and offer to discuss an accommodation, triggering a duty on the union's behalf to engage in such a discussion. Yet Fields failed to do so, with the partial exception of one request (the March 3, 2022 request for definitions and examples related to performance assessments). As noted, on that occasion, he did express a concern as to overbreadth and burdensomeness. However, he failed to make a timely offer to cooperate with the Union to reach such an accommodation.

That Fields may have in fact been personally overwhelmed by the requests is also not dispositive. The fact is that, despite the size of the bargaining units—and correspondingly,

Brooks's requests—Respondent assigned primary responsibility for responding to them to a newly minted Labor Advisor who struggled to gain cooperation from management in assembling responses. Indeed, Fields himself openly admitted that his own lack of inexperience, as well as his management colleagues' lack of cooperation, contributed to him being overwhelmed by Brooks' requests to the point where he admittedly did not respond. Considering this, I do not find persuasive Respondent's claims that the Beaumont facility was barraged with a volume of requests that tripled the number received by its "three other largest refineries combined." (R. Br. at 34–35.) Setting aside what "other largest" denotes, there is nothing to indicate that this anecdotal disparity was not attributable to the size of those facilities and/or their level of labor-management harmony as compared to the Baytown facility. More frankly, there is also no evidence that the information requests at those facilities were also handled by someone who, like Fields, was new to his position and did not receive full cooperation from his own company's personnel in fulfilling requests.

CONCLUSIONS OF LAW

1. Respondent, Exxon Mobil Corporation, 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 (the Chemical Company Unit) 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 (the Lab Unit) 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 (the Fuels & Lubricants Unit) 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. At all material times, Respondent has recognized the Union as the designated exclusive collective-bargaining representative of the Chemical Company Unit, Lab Unit and Fuels & Lubricant Unit employees.

7. By its unreasonable refusal to provide and/or delay in providing the necessary and relevant information requested by the Charging Party Union since about October 6, 2021, as set forth in paragraph 9 of the complaint in this case, as modified by the parties' stipulations set forth at Joint Exhibits 1 and 2, Respondent has violated Section 8(a) (5) and (1) of the Act.

8. By arbitrarily forbidding Union officials from conducting Union business "on the clock" and by arbitrarily curtailing their ability to meet in person for the purpose of engaging in grievance-related activity, Respondent has violated Section 8(a)(1) of the Act.

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

10. 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 and refusing or delaying providing the Union with certain relevant information requested between October 6, 2021 to March 7, 2023, I recommend Respondent be ordered to provide the Union the information as specified in the recommended Order below. There were 42 requests for information as identified herein.

Respondent shall also post an appropriate notice, as described in the attached Appendix. This notice shall be posted in Respondent's 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 its facility at 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 1, 2021.

The Acting General Counsel seeks the extraordinary remedy of requiring Respondent to maintain an information request log. Charging Party seeks additional extraordinary remedies, including training of managers and supervisors and production of an information request log. In support, the Acting General Counsel cites to the instant complaint allegations and Charging Party

cites the complaint in Case 16-CA-229107 as evidence that Respondent has a proclivity to violate the Act. Allegations which neither the Board nor the federal courts have found meritorious, however, are insufficient to establish a respondent as a recidivist violator warranting the imposition of the extraordinary remedies requested. See *HTH Corp.*, 361 NLRB 709, 714–715 (2014) (extraordinary remedies warranted based upon respondents' "10-year history of violations" and the "egregious and pervasive violations" immediately at issue).

Here, neither the Acting General Counsel nor Charging Party cite any decisions of the Board or of the federal courts that would establish a proclivity to violate the Act on Respondent's part. Nor has Respondent entered into any formal settlement agreements without non-admissions clauses, which may establish a history of recidivism. See *Amerinox Processing, Inc.*, 370 NLRB No. 105, slip op. at 2 (2021); *Bodega Latina Corp. d/b/a El Super*, 367 NLRB No. 34, slip op. at 1, fn. 4 (2018). The requests for extraordinary remedies are therefore denied.

Charging Party further asserts Respondent's conduct warrants: (a) the posting and reading of an Explanation of Rights, (b) publication of same (along with the notice in this case) in a local newspaper of broad circulation, (c) posting of the same (along with the notice in this case) for period of one year; and (d) granting of visitation rights to Board agents to monitor Respondent's compliance with any Board order that issues in this case. I find these remedies, which the Board typically reserves for cases involving "egregious and pervasive unfair labor practices," unnecessary in this proceeding in order to ensure that the bargaining unit employees are fully informed of their rights. See *Noah's Ark Processors*, 372 NLRB No. 80, slip op. at 5 (citing *David Saxe Productions, LLC*, 370 NLRB No. 103, slip op. at 6 (2021)).

Charging Party also seeks an award of the litigation expenses it incurred in connection with this proceeding. The Board has in the past awarded litigation expenses where a respondent "asserts frivolous defenses or otherwise exhibits bad faith in the conduct of litigation." *Veritas Health Services, Inc.*, 363 NLRB 963, 963 fn. 5, 972 (2016), enf. denied in relevant part 895 F.3d 69 (D.C. Cir. 2018); see also *HTH Corp.*, 361 NLRB at 711–712, enf. denied in relevant part 823 F.3d 668 (D.C. Cir. 2016). I do not find that Respondent's conduct in defending this case rises to the level of advancing "frivolous" assertions or defenses or exhibiting bad faith.

For these reasons, I find that traditional remedies are adequate to ameliorate the coercive impact of the unfair labor practices with respect to which I recommend a merit finding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Exxon Mobil Corporation, and its officers, agents, and representatives, shall

[17] 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.

1. Cease and desist from

(a) 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;

(b) 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;

(c) Arbitrarily forbidding union officials from conducting union business "on the clock."

(d) Arbitrarily curtailing union officials' ability to meet in person for the purpose of engaging in grievance-related activity.

(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) Promptly provide the Union with the 34 requests for information the Union requested from October 6, 2021 to March 7, 2023, as detailed in the findings of fact;

(b) Within 14 days after service by the Region, post at its Baytown facility, copies of the attached notice marked "Appendix." 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, 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 1, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that 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. January 5, 2026

5

Mara-Louise Anzalone
Administrative Law Judge

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose 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 fail and refuse to bargain collectively with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 13−2001 (Local 13−2001) by failing and refusing or timely providing 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 arbitrarily forbid Local 13−2001 officials from conducting union business during work time.

WE WILL NOT arbitrarily limit Local 13−2001 officials' ability to meet in person to conduct grievance-related activity.

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

WE WILL furnish the Union in a timely and complete manner, the information in with the 34 requests for information the Union submitted to us between October 6, 2021 to March 7, 2023.

EXXON MOBIL CORPORATION
(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-290036 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 (682) 703-7489.