UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WP COMPANY LLC, D/B/A
THE WASHINGTON POST

and Cases 05-CA-304158

WASHINGTON-BALTIMORE NEWS GUILD,
LOCAL NO. 32035 A/W THE NEWS GUILD,
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, CLC

Barbara E. Duvall, Esq., for the General Counsel
Jessica Kastin and Makayla L. Halkinrude-Allmaras, Esqs. (Jones Day), for the Respondent
Robert E. Paul, Esq. (Robert E. Paul, PLLC), for the Union

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried virtually via Zoom.gov technology on September 24 and 29, 2025. The charge in this case was filed by the Washington-Baltimore News Guild, Local 32035 A/W The News Guild, Communication Workers of America, AFL-CIO, CLC (Union) on September 22, 2022. Based on that charge, the Acting General Counsel (General Counsel) issued a Consolidated Complaint and Notice of Hearing in Cases 05-CA-304158 and 05-CA-324068 (the complaint) on April 7, 2025 alleging, in part,[1] that the WP Company LLC, D/B/A The Washington Post (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)[2] by: (1) since August 11, 2022, failing and refusing to provide the Union's verbal request on that day for the name-linked salary information of Union represented employees; and (2) since August 31, 2022, failing and refusing the Union's August 2022 written request for such information.

Respondent admits that it refused the Union's request for name-linked salary information. However, it denies that such information was relevant to the Union's performance of its representational duties and asserts several affirmative defenses: (1) the Union waived its right to obtain name-linked salary data through a settlement agreement in effect since 1989; (2) the parties negotiated multiple collective-bargaining agreements between 1989 and 2023 without Respondent providing name-lined salary data; (3) and "[t]he Board lacks authority to nullify the 1989

[1] On September 22, 2025, the Regional Director ordered Cases 05-CA-304158 and 05-CA-324068 severed, granted the Union's request to withdraw the charge in Case 05-CA-324068 regarding Respondent's sports department employees, and amended the complaint to delete and renumber the complaint to reflect only the allegations in Case 05-CA-304158.

[2] 29 USC § 158(a)(5) and (1).

Settlement Agreement, in which the [Union] agreed not to seek name-linked salary data from Respondent, and thus lacks authority to grant the [Union's] requested relief."

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

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited liability company with its principal office and place of business in Washington, D.C., is engaged in the publication and distribution of a daily newspaper, The Washington Post. Annually, Respondent derives gross revenues in excess of $200,000 and is a member of, and subscriber to, various interstate news services and regularly carries in its publications advertisements of nationally sold products. Additionally, since Respondent conducts the aforementioned business operations in Washington, D.C., it is subject to the plenary jurisdiction of the National Labor Relations Board (the Board). The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Bargaining Unit

Since 1963, Respondent has recognized the Union as the exclusive collective-bargaining representative of Respondent's employees in the following bargaining unit[4] pursuant to Section 9(b) of the Act:

> All employees employed by The Washington Post in the Accounting, Administrative Services, Advertising, Circulation, Communications, Editorial, Marketing, Digital Advertising Sales, News and Purchasing departments; other business departments to the extent that Guild-covered positions are transferred to such other business departments; the maskers and scalers of the Production Department; the Centrex Operators and Mail Desk employees of the Administrative Services Department; and News Service employees, but excluding those classifications described in Article I, Section 1(b) of the current collective-bargaining agreement.

This recognition has been embodied in 11 collective-bargaining agreements (CBAs) and/or contract extensions since August 2, 1989, the most recent of which is effective from December 31,

[3] I found Jay Kennedy and Evan Yeats both credible regarding the relevant communications between the parties. Kennedy, Respondent's Vice President of Labor Relations and General Counsel, at all material times, has been an admitted supervisor within the meaning of Section 2(11) and agent within the meaning of Section 2(13) of the Act.

[4] The bargaining unit currently consists of approximately 700 to 750 employees.

2023, through December 31, 2026. Additionally, the parties entered into several memorandum agreements covering periods in between CBAs.

B. The 1989 Settlement Agreement

In preparation for, and in the course of, bargaining since 1986, the Union has continuously sought the production of name-linked salary information of unit employees. Unsuccessful in those efforts, the Union first filed charges in 1986 and 1987 regarding Respondent's refusal to provide the name-linked salary information of unit employees. On May 31, 1988, the General Counsel issued an Order Consolidating Cases, Second Consolidated Complaint, and Notice of Hearing in Cases 05-CA-18575, 05-CA-18614, and 05-CA-1910. On February 27, 1989, the Respondent and Union entered into a non-Board settlement agreement (1989 Settlement Agreement) resolving the information requests at issue in those cases. [5] The agreement includes several provisions relevant to this dispute:

PURPOSES OF THE AGREEMENT

3. The purposes of this Agreement are to resolve all issues related to the Litigation and to ensure orderly collective bargaining between the parties in the future.

NONADMISSION

4. Neither this Agreement nor any statement, commitment or position taken by The Post or Local 35 in connection with the negotiation of this Agreement shall be deemed evidence of, or an admission with respect to, any issue of law or fact to be used against The Post or Local 35 in any proceeding that may hereafter be initiated before any arbitrator, court, administrative agency or any other tribunal. Nothing in this Agreement shall be deemed to be a waiver by The Post or Local 35 of their rights to seek remedies under the law in any future proceeding before any arbitrator, court, administrative agency or any other tribunal with respect to any dispute arising after the effective date of this Agreement.

OBLIGATIONS OF THE PARTIES

5. The Post agrees to provide Local 35 staff, The Post Unit Officers, and The Post Unit Bargaining Committee with the following information on a non-name-linked basis: each employee's department, present job classification, original date of hire, date of birth, race, sex, full-time or part-time status and hourly rate, and information disclosing the salary history of each bargaining unit employee ("Collective Bargaining Data"). The salary history of each bargaining unit employee shall reflect the amount, date and type of salary increase since June 1, 1984 through December 31, 1988. The Post will furnish this data, and a separate list of the names and addresses of all bargaining unit employees, not later than April 1, 1989. Salary histories for any period subsequent to December 31, 1988 will be provided not later than 90 days prior to the expiration of any future collective bargaining agreement or the commencement of collective bargaining and will reflect salary histories of bargaining unit employees subsequent to those most recently provided, but in no event less than once every three years beginning July 1, 1989.

[5] R. Exh. 1.

6. Local 35 and its staff, The Post Unit Officers and The Post Unit Bargaining Committee agree that they will use the Collective Bargaining Data solely for the purpose of representing the bargaining unit with respect to terms and conditions of employment and that they will not disclose, publicize, disseminate or release in any way the Collective Bargaining Data in a manner which would tend to identify the employees in the bargaining unit by name.

7. The Post shall separately maintain sole custody of the salary compilation, described in paragraph 5 above, in a form linked to employees' names ("Verification Data"). One copy of this Verification Data shall be maintained in the office of The Post's Vice President/Industrial Relations. After The Post furnishes Local 35 with the Collective Bargaining Data, The Post shall allow a neutral third party, selected by mutual agreement of The Post and Local 35, the opportunity to review the Verification Data for the sole purpose of confirming that the Collective Bargaining Data is accurate. The individual selected, whose fees and expenses shall be shared equally, must agree in writing, prior to reviewing such data, that he/she will review the data at a designated location in The Post's executive offices, will not remove or copy any information from the Verification Data or the Collective Bargaining Data and will not disclose, disseminate, publicize or release in any manner such information.

RESOLUTION OF DISPUTES

12. The failure of either The Post or Local 35 to enforce at any time any one or more of the terms or conditions of this Agreement shall not be deemed a waiver of such terms or conditions or of The Post's or Local 35's rights thereafter to enforce each and every term and condition of this Agreement.

DURATION

16. This Agreement shall continue in full force and effect unless or until it is modified or terminated in writing by mutual agreement of all parties hereto.

C. The 2005 Side Letter

Prior to November 8, 2005, the Union and Respondent were parties to four CBAs. At the October 5, 2005 bargaining session, the Union requested "the annual salary data that you currently give us every three years" in order to determine the progress made by Respondent in "eliminat[ing] pay disparities based on race and sex."[6] Responding to Respondent's claim that it already provided sufficient data for that purpose, the Union clarified what it was seeking:

> First, we have not asked for name-linked data. . . . The data we get is limited. What we are asking for is more specific data. We are asking for it to be in electronic form so we can use it, without spending thousands of dollars, so we can manipulate and sort the data in an accurate way because we need an accurate way to judge if the disparities are closing or

[6] R. Exh. 3(a) at 10-11.

> getting wider. Our difference shows a $10,000 pay difference in the classification of reporter, between white and black. And in other areas, like who gets merit pay, we found the bulk of merit pay goes to people making well over $100,000. How many minority reporters are in that group? This information needs to be transparent. You say, and I take it at face value, the desire of The Post to be a diverse and a nondiscriminatory workplace with equal opportunity for all. At the Newspaper Guild, this is part of our charge. I know that The Post has said that this is their goal. But there is no justifiable reason to withhold the salary and demographic information if all who are involved need to be able to see, at least on an annual basis, so we can be comfortable that The Post is implementing what its stated goal is. This is a topic addressed years and years ago. The biggest time that The Post addressed this was in 1993, with the Getler Report. The Post has acknowledged that it has not met the action steps outlined of what to do in 1993 that need to be done. The first step in there is to provide information to the Guild voluntarily, and to make it in a way that we can use. The Post, it is not acceptable to say that we get it only once a year. And yes, I commend you that when I request a copy of the report that had the last increase, you gave it to me. Employees need this once a year so people can be confident and have faith in the system. We don't need anyone's names, this has nothing to do with name-linked data.[7]

On November 7, 2005 the parties entered into a letter agreement stating that the information covered by the 1989 Settlement Agreement would be produced to the Union in electronic format. (2005 Side Letter).[8] That letter was attached to the November 8, 2005-November 7, 2008 CBA (2005-2008 CBA):

> This letter confirms our understanding that The Post will continue to provide the Guild with the non-name linked salary data identified in the 1989 Settlement Agreement outside the time periods referenced in the 1989 Settlement Agreement when the Guild makes a reasonable request for such data (e.g., because of contract pay increases), but not more frequently than once a year. The Post will provide this data in electronic form provided that the Guild provides The Post with appropriate written assurances that the Guild will take all necessary steps to maintain the confidentiality of this electronic data, and prevent any unauthorized dissemination, viewing or retrieval of this data.
>
> Nothing in this letter shall be deemed to modify or amend the 1989 Settlement Agreement, and any data provided under this letter shall be subject to the limitations and restrictions set forth in the 1989 Settlement Agreement.

Since then, the 2005 Side Letter has been incorporated into every CBA between the Union and Respondent covering the following periods: June 8, 2009-June 7, 2011 (2009-2011 CBA); July 27, 2011-July 26, 2013 (2011-2013 CBA); November 8, 2013-October 31, 2014 (2013-2014 CBA); June 11, 2015-June 10, 2017 (2015-2017 CBA); July 13, 2018-July 12 2020 (2018-2020 CBA); and December 31-December 31, 2026 (2023-2026 CBA).

[7] Id. at 12-13.
[8] R. Exhs. 4, 10.

D. Respondent Provided Only Non-Name-Linked Salary Data Between 1989 and 2022

Relying on the 1989 Settlement Agreement and the 2005 Side Letter, Respondent has consistently refused the Union's requests since 2005 for bargaining unit employees' name-linked salary data. In numerous communications since that time, Respondent has continued to provide the Union with employees' non-name linked salary data in electronic form.

On February 7, 2011, Respondent responded to the Union's information request for bargaining unit employees' salary data as follows:[9]

> In response to your request for Collective Bargaining Data pursuant to the Collective Bargaining Salary Data side letter to the Post-Guild Agreement, we enclose a non-name-linked salary data report for the period from July 28, 2010 to January 31, 2011. We are providing this data subject to the limitations on use and dissemination set forth in the 1989 NRLB Settlement Agreement and in the Collective Bargaining Salary Data side letter. Pursuant to the Collective Bargaining Salary Data side letter, The Post is providing this data in electronic form.
>
> We are providing this report without waiver of The Post's legal or contractual rights and without precedent to future requests. In addition, we will respond to your more specific data requests shortly.

On March 21, 2011, the Union followed-up with an additional request for "Collective Bargaining Data referenced in the 1989 Settlement Agreement, but only for ex-WPNI, now Washington Post employees."[10]

On July 14, 2014, the Union submitted a bargaining proposal to include name-linked salary information at Article 17 of the contract. Respondent did not accept that proposal.[11]

On September 12, 2014, Respondent replied to the Union's August 22, 2014 information request for "Collective Bargaining Data referenced in the 1989 Settlement Agreement":[12]

> In response to your request for Collective Bargaining Data pursuant to the Collective Bargaining Salary Data side letter to the Post-Guild Agreement, we enclose a non-name-linked salary data report for the period from May 1, 2013 through August 31, 2014. We are providing this data subject to the limitations on use and dissemination set forth in the 1989 NRLB Settlement Agreement and in the Collective Bargaining Salary Data side letter. Pursuant to the Collective Bargaining Salary Data side letter, The Post is providing this data in electronic form. We are also providing the Job Code Key requested by the Guild.

On September 23, 2014, the Union's bargaining proposal included a provision for Respondent to provide it with information specific to certain employees, including name and

[9] R. Exh. 9 at 13113.
[10] R. Exh. 9 at 13234.
[11] R. Exh. 8 at 3; Tr. 98-99, 100-101.
[12] R. Exh. 9 at 11446, 13466.

salary. The parties discussed that proposal, but Respondent did not agree and it was not included in the 2015-2017 CBA.[13]

On June 27, 2016, "[i]n order for the Guild to further address the issue of pay parity at the Post," the Union requested the following information:[14]

1. Collective bargaining data" referenced in the 1989 Settlement Agreement, including job code key, in electronic form. We ask that the salary data be up-to-date – that is, that it include the receipt of the general increase received by employees in 2016 pursuant to Article VI, Section 7(b) of the current agreement.

2. With regard to each current bargaining unit employee, we request a) the number of years of experience both while employed by the Post and any employment prior to being employed by the Post, including job titles of all such positions, and b) a complete salary history for each such employee during his/her employment by the Post that includes the amount of each increase in compensation, the type or reason for the increase (for example, "merit increase," "bonus," "general wage increase," "promotion," etc.), and the date of the increase.

On May 20, 2019, the Union sent Respondent a similarly worded information request in order "to better inform our members of pay at the Post and prepare for collective bargaining":[15]

1. "Collective bargaining data" referenced in the 1989 Settlement Agreement, including job code key, in electronic form. We ask that the salary data be up-to-date – that is, that it include the receipt of the general increase received by employees from 2018-2019 pursuant to Article VI, Section 7(b) of the current agreement.

2. With regard to each current bargaining unit employee, we request a) the number of years of experience both while employed by the Post and any employment prior to being employed by the Post, including job titles of all such positions, b) a complete salary history for each such employee during his/her employment by the Post that includes starting salary, the amount of each increase in compensation, the type or reason for the increase (for example, "merit increase," "bonus," "general wage increase," "promotion," etc.), and the date of the increase, c) the gender, ethnicity, age for each such employee, d) a complete job title and desk history for each such employee during his/her employment by the Post.

3. A list of departures of former bargaining unit employees in the last five years at the Post and with regard to each employee, the requested information listed in the second bullet point.

In each instance, Respondent responded by providing non-name-linked salary information in electronic form.[16]

[13] R. Exh. 5 at 3; Tr. 82, 86.
[14] R. Exh. 9 at 13468.
[15] R. Exh. 9 at 13238.
[16] Tr. 109-110.

E. The 2022 Information Requests

After the 2018-2020 CBA expired,[17] the Union and Respondent entered into a Memorandum of Agreement extending its terms from July 12, 2020 to April 30, 2021 (2020-2021 MOA).[18] On April 28, 2021, the 2018-2020 CBA's terms were further extended by another Memorandum of Agreement through June 30, 2022 (2021-2022 MOA).[19]

On May 6, 2022, in preparation for bargaining, the Union requested, in part, the following salary-related information:[20]

1. Name, address, gender identity (if given), race, date of birth, job title and salary.

2. Salery adjustments or raises given since July 13, 2018, along with the reason for the raise of adjustment.

On June 13, 2022, Respondent responded to that request by providing non-name-linked salary information "consistent with the July 13, 2018 side-letter in the Post-Guild agreement that addresses the provision of collective-bargaining data."[21]

The parties began negotiations on July 14, 2022. The Union's initial bargaining proposal included the following language:[22]

> 7. (d) The Post shall, upon the Guild's request, provide it with the names, addresses, gender, ethnicity, salaries and wages, changes to pay, and departments of all Guild-covered employees once each year.

On August 11, 2022, the Union followed-up during bargaining with a verbal request that Respondent furnish it with the following information:

> Name-linked salary information, including name, date of hire, date of birth, gender identity (if available), race (if available), address, and salary.

Respondent refused to provide that information based on its interpretation of the 1989 Settlement Agreement that it was only required to provide non-name linked salary data.[23]

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[17] GC Exh. 2.
[18] GC Exh. 3.
[19] GC Exh. 4.
[20] R. Exh. 6 at 13475.
[21] Id. at 13092.
[22] GC Exh. 6.
[23] Yeats explained that "it's standard practice when bargaining a contract to figure out the impact on different people" and "classifications," including "pay equity issues" and determining who was being "cost burdened" by their health care selections. (Tr. 31-34.)

On August 22, 2022, the Union followed-up with a written information request and provided a timeframe for compliance:[24]

> Please provide this information within the next ten business days (two weeks). If any part of this request is denied or if any materials are unavailable, please state so in writing and provide the remaining items by the above date, which the Guild will accept without prejudice to its position that it is entitled to all documents and information sought in this request.

On August 31, 2022, Respondent again refused the Union's written request for name-linked salary information:[25]

> With respect to the Guild's request for name-linked salary information, we do not believe that The Post has any obligation to provide this information to the Guild under the terms of the 1989 Settlement Agreement and the contractual side-letter addressing Collective Bargaining Data, which cover this very issue. These long-standing agreements define the wage-related Collective Bargaining Data that The Post must provide the Guild to ensure orderly bargaining, they make clear that The Post does not have to provide the Guild with name-linked salary data, and they even limit the frequency by which the Guild can request this data:
>
> > "This letter confirms our understanding that The Post will continue to provide the Guild **with the non-name linked salary data** identified in the 1989 Settlement Agreement outside the time periods referenced in the 1989 Settlement Agreement when the Guild makes a reasonable request for such data (e.g., because of contract pay increases), **but not more frequently than once a year"** (emphasis in original).
>
> The Post provided the Guild with the required Collective Bargaining Data on June 13, 2022, as part our response to the Guild's pre-bargaining information request. By the plain terms of the side letter and the Settlement Agreement, The Post has fulfilled its obligation to provide the Guild with salary information and has no obligation to provide name-linked salary information or updated non-name linked salary data to the Guild at this time. If there is specific, non-name-related information that you believe needs to be updated in the June 2022 Collective Bargaining Data we provided, please identify it, and we will evaluate it and respond as appropriate.

During bargaining in September 2022, the Union again requested name-linked salary data in relation to pay equity. The Union requested the information because Respondent consistently asserted that the Union's pay equity studies using non-named salary data were inaccurate and not based on an adequately detailed studies. In this instance, the Union alluded to a pay study establishing that women and people of color were being paid systemically less. Respondent's representatives disagreed and asserted that the Union did not have enough detailed information to

[24] GC Exh. 6.
[25] GC Exh. 7.

conduct an accurate study. The Union representatives responded that they would be able to conduct more accurate studies if Respondent provided the requested information.[26]

Respondent did not relent and proceeded to provide the Union with non-name-linked salary data listing each employee's ID number,[27] department and jurisdiction, base pay, pay rate type, base pay changes, effective dates, and business process reasons. It did, however, provide the Union with name-linked data relating to comp time, bonus, holiday, or other additional payments, and accrued personal leave, vacation, comp time, and holiday compensation time off. Additionally, Respondent provided the Union with name-linked healthcare benefits data listing the contribution costs for each employee, the monthly cost for each employee's healthcare broken out by dental, vision, medical, and HSA contribution, and identified which specific plans each employee chose to enroll in for each year. The Post also provided spreadsheets identifying each employee by gender, race/ethnicity, hire date, date of birth, and job title.[28]

The parties eventually reached agreement and entered into the 2023-2026 CBA on December 31, 2023.[29] Once again, a replication of the 2005 Side Letter was attached.[30]

LEGAL ANALYSIS

I. THE 2022 INFORMATION REQUESTS WERE PRESUMPTIVELY RELEVANT

A. Respondent's Duty to Provide Information

It is well settled that wages, hours, and other terms and conditions of employment are mandatory subjects of bargaining over which an employer has an obligation to bargain with its

[26] Although unclear if Yeats gave this explanation at that session, he testified that the requested information would have enabled them to compare "differences in pay . . to resumes, LinkedIn entries, and things like that to compare for experience, and education, and things like that, so we can conduct reasonable analysis of who is getting paid what, whether the pay equity practices of the Post live up to their goal, and whether the pay equity review process that we had negotiated and were negotiating changes to is meeting its goals . . ." (Tr. 35-37.) There is no assertion, however, that the non-name-linked salary data reports provided by Respondent since 1989 ever omitted gender and race.

[27] I credit Kennedy's undisputed testimony that the employee ID numbers enabled the Union "to go back to, sort of, prior information, request responses, sort of, link up the data they're getting here with information we provided earlier that would also have had employee ID." (Tr. 97.)

[28] Kenndy testified that the employees' names were not redacted in R. Exh. 7(a),the 2020 dental and medical benefits spreadsheets produced in 2022. Although not addressed in his testimony, I find that employees' names in R. Exhs. 7(i), 7(j), and 7(k) were also unredacted in Column A on the 2018, 2019, 2021, and 2022 dental and medical benefits spreadsheets produced in 2022. (Tr. 93-95.)

[29] Yeats testified that there is a pay equity provision in the current CBA and the name-linked salary information remains relevant because "our contract expires next year" and the Union needed it to "determine the impact of, for instances, that pay equity process of changes to the health insurance or changes to retirement.. It helps us cost the contract. It helps us substantiate the proposed claim that they've repeatedly made that they provide merit pay above and beyond the minimums for people. . . ." So namely, salary data lets us ensure that (a), The Post representations are accurate, (b) look at the trend lines and the impacts of our unit over time, determine its impact for different proposals around healthcare and pay equity, and be better prepared for bargaining, as we enter to another bargaining session." (GC Exh. 5; Tr. 37-38.)

[30] R. Exh. 7; Tr. 227.

employees' exclusive collective-bargaining representative. *NLRB v. Katz*, 369 U.S. 736, 742-743 (1962). As such, employers have "a general duty to provide information needed by the bargaining representative in contract negotiations and bargaining." *A-1 Door & Building Solutions,* 356 NLRB 499,500 (2011). If the information requested relates to the terms and conditions of employment of bargaining unit employees, it is "presumptively relevant" to the union's proper performance of its collective-bargaining duties. *Southern California Gas Co.,* 344NLRB 231, 235 (2005). An employer can avoid production only if it either proves the information is not relevant or demonstrates some reason why it cannot be provided. *Ormet Aluminum Mill Products Corporation,* 335 NLRB 788, 801 (2001). The standard to be applied in determining the relevance of an information request is a liberal, "discovery-type standard." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

Information relating to the employee compensation of bargaining unit employees clearly falls within the category of presumptively relevant information. See *Wyman Gordon Pennsylvania, LLC*, 368 NLRB No. 150, slip op. at 6 (2019) (request for information on how bonuses were calculated was presumptively relevant); *Page Litho, Inc.,* 311 NLRB 881, 882 (1993) (information request for names and payroll records was presumptively relevant); *Rieth-Riley Construction Co.*, 372 NLRB No. 142, slip op. at 19 (2023) (request for the names, job classifications and compensation were presumptively relevant).

The Union contends that name-linked salary information is necessary to evaluate pay equity and to form its healthcare proposals. Board precedent supports the Union's request as presumptively relevant. In *Boston Herald-Traveler Corp.,* 110 NLRB 2097, 2098-20997 (1954), enfd. 223 F.2d 58 (1st Cir. 1955), the Board found that the employer unlawfully refused to provide the union with name-linked salary information. Rejecting the argument that information previously provided adequately met the union's needs, the Board noted:

> Even if the Union had failed "initially to show the relevance of the information," this does not negate the possibility that full disclosure of payroll information might reveal inequities and other factors in wage structure upon which the statutory bargaining representative has a right and a duty to negotiate.

The Board subsequently affirmed several administrative law judge decisions concluding that employers violated the Act by refusing to produce name-linked salary information, the most recent of which involves the same parties. See *The Washington Post,* 237 NLRB 1493 (1978); *Northwestern Photo Engraving Co., Inc.,* 140 NLRB 24, 38 (1962); *Boston Record-American-Advertiser Division-The Hearst Corp.,* 115 NLRB 1095 (1956).

II.. RESPONDENT REBUTTED THE PRESUMPTION THAT THE 2022 INFORMATION REQUESTS WERE PRESUMPTIVELY RELEVANT

A. Applicable Precedent

Since the August 2022 information requests for name-linked salary information were presumptively relevant, the burden shifted to Respondent to prove a lack of relevance, *Prudential Insurance Co. v. NLRB*, 412 F.2d 77, 84 (2d Cir.), cert. denied, 396 U.S. 928 (1969), or provide adequate reasons as to why he cannot, in good faith, supply such information, *Emeryville Research*

Center, Shell Development Co. v. NLRB, 441 F.2d 880 (9th Cir. 1971) (refusal to supply relevant salary information in precise form demanded did not violate the Act because the employer's proposed alternatives were responsive to union's need).

"Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met." *NLRB. v. Truitt Manufacturing Co*., 351 U.S. 149, 153-154 (1956). Once again, a discovery-type standard applies and ["a]n employer is entitled to show that special circumstances justify some protection, just as parties to litigation may be entitled to protective orders in the course of discovery." See e.g., *Kroger Co. v. NLRB*, 399 F.2d 455 (6th Cir. 1968) (no disclosure of operating ratio data when, under circumstances, interests of employer predominated);

Respondent contends that name-linked salary data is neither relevant nor necessary under the circumstances for several reasons: (1) the Union conceded that name-linked information was not necessary during the 2005 negotiations; (2) the Union receives salary information linked to demographic information; (3) Respondent provides salary information using employee IDs to identify each employee; and (4) the Union provided health insurance proposals and the parties reached an agreement on those items without name-linked salary data.

Respondent's relevance argument misses the mark. It did not dispute the relevance of the requests when they were made in August 2022. Instead, it relied on the provisions of the 1989 Settlement Agreement and the 2005 Side Letter limiting future production obligation to non-name-linked salary information. The question remains, however, whether the 1989 Settlement Agreement and the 2005 Side Letter provide a legitimate justification for Respondent's refusal to provide the Union with relevant information, i.e., the name-linked salary information of bargaining unit employees.

B. The 1989 Settlement Agreement

1. The Agreement May Not Be Deemed Evidence of a Waiver

Respondent asserts two affirmative defenses to the Union's demand for name-linked salary data of bargaining unit employees based on the 1989 Settlement Agreement—(1) a clear and unmistakable waiver requiring it to produce such information (second defense), and (2) the continued effectiveness of the agreement that it only needs to provide the Union with certain non-name-linked salary data (sixth defense).

In support of its defense that the Union waived its statutory rights, Respondent relies on Section 5 of the 1989 Settlement Agreement, which required it provide only non-name-linked salary information consisting of each bargaining unit employee's department, job classification, date of hire, date of birth, race, sex, full-time or part-time status, hourly rate, and salary history. The provision also expressed Respondent's obligations going forward:

> Salary histories for any period subsequent to December 31, 1988 will be provided not later than 90 days prior to the expiration of any future collective bargaining agreement or the commencement of collective bargaining and will reflect salary histories of bargaining unit

employees subsequent to those most recently provided, but in no event less than once every three years beginning July 1, 1989.

In response, the General Counsel contends that the nonadmission provision at Section 4 of that agreement precludes its use as evidence of a waiver:

> Neither this Agreement nor any statement, commitment or position taken by The Post or Local 35 in connection with the negotiation of this Agreement shall be deemed evidence of, or an admission with respect to, any issue of law or fact to be used against The Post or Local 35 in any proceeding that may hereafter be initiated before any arbitrator, court, administrative agency or any other tribunal. Nothing in this Agreement shall be deemed to be a waiver by The Post or Local 35 of their rights to seek remedies under the law in any future proceeding before any arbitrator, court, administrative agency or any other tribunal with respect to any dispute arising after the effective date of this Agreement.

Board precedent requires that a waiver of statutory rights be "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). " Waiver can be established through the provisions in the parties' collective-bargaining agreement, by the conduct of the parties (including past practice, bargaining history, and action or inaction), or by a combination of the two." *E.I. DuPont DeNemours & Co.*, 368 NLRB No. 48, slip op. at 8 (2019), quoting *American Diamond Tool*, 306 NLRB 570 (1992).

Express waivers may be demonstrated through settlement agreements and supplemental letters to collective-bargaining agreements. See *United Techs. Corp.*, 274 NLRB 504, 507 (1985) (Board enforced waiver where letter supplementing collective-bargaining agreement "embodie[d] an agreement whereby m exchange for certain records and documents at certain specified times without prior advance requests submitted, the union will forgo other requests for information from the Respondent."); *Southwestern Bell Telephone Co.*, 667 F.2d 470, 476 (5th Cir. 1982) (union waived future right in settlement agreement to copies of documents in personnel files in the absence of written request by the affected employee grievants).

The 1989 Settlement Agreement, whose purpose was "to ensure orderly collective bargaining between the parties in the future." expressly waived the Union's statutory right to future requests for name-linked salary data plain language until such time as the parties agreed to modify or terminate the agreement. In return, Respondent agreed to provide non-name-linked salary data, including race and gender, as well as "a separate list of the names and addresses of all bargaining unit employees." Respondent further agreed to provide such information "no event less than once every three years beginning July 1, 1989."

The 1989 Settlement Agreement's waiver provision, however, is offset by the nonadmission clause. That provision expressly states that the agreement was not to be "deemed evidence of, or an admission with respect to, any issue of law or fact" or "deemed to be a waiver" of their "rights to seek remedies under the law in any future proceeding before any arbitrator, court, administrative agency or any other tribunal." Accordingly, the 1989 Settlement agreement will not be considered as "evidence of, or an admission" that the Union waived its right to name-linked salary information.

2. The Agreement Remains Effective and Enforceable

While the 1989 Settlement Agreement may not to be deemed evidence of or an admission regarding the Union's statutory rights, the fact remains that Section 5 obligated Respondent to provide the Union with bargaining unit employees' non-name-linked salary and other personal data, as well as a separate list of the names and addresses of all bargaining unit employees. It also provided that the "[s]alary histories for any period subsequent to December 31, 1988 will be provided not later than 90 days prior to the expiration of any future collective bargaining agreement or the commencement of collective bargaining and will reflect salary histories of bargaining unit employees subsequent to those most recently provided, but in no event less than once every three years beginning July 1, 1989." Moreover, pursuant to Section 16, Respondent's obligation regarding the production of salary-related data continues "in full force and effect unless or until it is modified or terminated in writing by mutual agreement of all parties hereto."

The General Counsel asserts, however, that (1) the agreement is unenforceable because its duration was perpetual in nature and, (2) it did not survive the expiration of the 2018-2020 CBA.

First, the 1989 Settlement Agreement is not unenforceable merely because it lacks an explicit duration. The agreement contains a durational clause stating that it is effective "unless or until it is modified or terminated in writing by mutual agreement." Since that language states a specific occurrence by which the agreement can be modified or terminated it remains enforceable. See *Boeing Airplane Co. v. NLRB,* 174 F.2d 988, 989-991 (D.C.Cir.1949) (rejecting union's contention that interim agreement containing no-strike clause of indefinite duration—"until a new Agreement has been reached by the parties either through negotiation or arbitration"—was unlawfully perpetual).

Second, the Union's contention that the 1989 Settlement Agreement had expired by August 2022, along with the twice-extended 2018-2020 CBA, also falls short. The General Counsel asserts that, without an explicit agreement, a waiver does not extend beyond a contract's expiration date. *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 369 NLRB No. 61, slip op. at 2-3 (2020) ("provisions in an expired collective-bargaining agreement do not cover post-expiration unilateral changes unless the agreement contained language explicitly providing that the relevant provision would survive contract expiration."); *E. I. DuPont DeNemours*, 364 NLRB 1648, 1652 (2016) ("a management-rights clause does not extend beyond the expiration of the collective-bargaining agreement embodying it, in the absence of evidence of the parties' contrary intentions.")

Contrary to the General Counsel's argument, however, the 1989 Settlement Agreement was never incorporated into the 2018-2020 CBA nor any other any collective-bargaining agreement. The side letters, attached to every collective-bargaining agreement since 2005, continuously reaffirmed that the 1989 Settlement Agreement remained an independent document:

> Nothing in this letter shall be deemed to modify or amend the 1989 Settlement Agreement, and any data provided under this letter shall be subject to the limitations and restrictions set forth in the 1989 Settlement Agreement.

Under the circumstances, the routine inclusion of, and reference to, the side letters simply restated the continued applicability of the 1989 Settlement Agreement and did not incorporate

them into any of the collective-bargaining agreements. See *RCA Corp. v. Loc. 241, International Fed. Of Prof. & Tech. Engineers, AFL-CIO*, 700 F.2d 921, 927 (3d Cir. 1981) (the "mere mentioning of" the retirement plan in the collective-bargaining agreement was insufficient to construe it as part of that agreement); *Printing Specialties & Paper Products. Union Local 680, Graphic Communication International Union, AFL-CIO v. Nabisco Brands, Inc.*, 833 F.2d 102, 105 (7th Cir. 1987) (collective-bargaining agreement did not incorporate provisions of the pension plan where it merely stated that the employer would keep the pension plan in full force and effect).

C. The Parties' Bargaining History and Past Practices

Respondent's third affirmative defense asserts that it and the Union "have collectively bargained multiple collective bargaining agreements between 1989 and 2023 without [Respondent] providing [the Union] with name-linked salary data."

"A waiver of bargaining rights can also be demonstrated by bargaining history if the evidence shows that the specific issue was 'fully discussed and consciously explored' during negotiations and that 'the union consciously yielded or clearly and unmistakably waived its interest in the matter.'" *Hospital Espanol Auxilio Mutuo De Puerto Rico, Inc.*, 374 NLRB No. 6, slip op. at 3 (2024), quoting *E.I. DuPont DeNemours & Co.*, supra at 8.

The record since 2005 reveals several instances in which the parties bargained over the Union's request for name-linked salary information.

(1) The 2005 negotiations. In procuring Respondent's agreement via the 2005 Side Letter to provide the required salary data in electronic format and more frequently, the Union clarified that "we have not asked for name-linked data" and "[w]e don't need anyone's names, this has nothing to do with name-linked data." As a result, the requirement to provide name-linked salary data was not included in the 2005-2008 CBA

(2) The 2014 negotiations. On July 14 and September 23, 2014, the Union's bargaining proposals included provisions for Respondent to provide it with name-linked salary data. The parties fully discussed both proposals, but Respondent did not agree.

(3) The 2022 negotiations. On July 14, 2022, the Union renewed its request during bargaining for name-linked salary information. The parties discussed the proposal, but Respondent did not agree, and it was not included in the 2023-2026 CBA.

The Union's repeated acquiescence to collective-bargaining agreements without the inclusion of language providing for name-linked salary data demonstrates that the Union continuously and "consciously yielded its position" on its proposals to the extent that it waived its such information pursuant to the 1989 Settlement Agreement. See *E. I. Dupont De Nemours & Co*., supra at 7-8 (waiver shown by evidence that "the parties fully discussed and consciously explored the matter at issue, and that the union consciously yielded or clearly and unmistakably waived its interest in the matter."); cf. *Midwest Power Systems, Inc.*, 323 NLRB 404 (1997) (union's acquiescence to prior unilateral changes did not constitute a waiver because the matter at issue had not been "fully discussed and consciously explored during negotiation" and the union had not "consciously yielded or clearly and unmistakably waived its interest in the matter").

Respondent also contends that the parties' past practice since 1989 constitutes evidence of the Union's waiver of its right to name-linked salary information. *E. I. Dupont De Nemours*, supra at 8 ("a clear and unmistakable waiver may be inferred from past practices")"; see also *In re California Pacific Medical Center*, 337 NLRB 910, 914 (2002) (clear and unmistakable waiver inferred where "the past practice of the parties demonstrates that the Respondent has historically exercised, on numerous occasions, the right to lay off without prior bargaining about the decision to do so."). Although not pleaded as an affirmative defense, the following information requests by the Union were made in preparations for the bargaining process.

(1) On February 7, 2011, Respondent responded to the Union's information request for "Collective Bargaining Data pursuant to the Collective Bargaining Salary Data side letter to the [1989 Settlement Agreement]" by providing "a non-name-linked salary data report for the period from July 28, 2010 to January 31, 2011."

(2) On March 21, 2011, the Union followed-up with an additional request for "Collective Bargaining Data referenced in the 1989 Settlement Agreement, but only for ex-WPNI, now Washington Post employees."

(3) On September 12, 2014, Respondent responded to the Union's August 22, 2014 information request for "Collective Bargaining Data referenced in the 1989 Settlement Agreement, including job code key, in electronic form," by providing "a non-name-linked salary data report for the period from May 1, 2013 through August 31, 2014" pursuant to "the 1989 NRLB Settlement Agreement and in the Collective Bargaining Salary Data side letter."

(4) On June 27, 2016 and May 20, 2019, the Union submitted similar requests for updated non-name-linked "Collective bargaining data" referenced in the 1989 Settlement Agreement.

Based on the foregoing, the parties past practices "corroborat[e] a finding of waiver" that the Union knowingly yielded to Respondent's continuous position that the 1989 Settlement Agreement only obligated it to produce non-name-linked salary information. *Omaha World-Herald*, 357 NLRB 1870, 1872 (union's acquiescence to employer's prior unilateral changes was consistent with the evidence of a contractual waiver).

D. Respondent is Not Obligated to Provide the Union With Name-Linked Salary Data

Based on the 1989 Settlement Agreement's nonadmission clause, evidence of the Union's express waiver has not been considered. The remaining factors, however, support the conclusion that the Union waived its statutory right to the name-linked salary information of bargaining unit employees: the language of the agreement, which remains in effect, obligating Respondent to provide only non-name-linked salary data; the bargaining history; and the parties' past practices.

Based on the foregoing, Respondent was legally justified in refusing the Union's 2022 information requests for name-linked salary data. *E.I. DuPont DeNemours & Co.*, supra at 6 ("the parties' contract language, bargaining history, and past practice" must be considered together in determining the existence of a party's waiver of the right to bargain over unilateral changes). Accordingly, I will recommend dismissal of the complaint.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act:

3. The General Counsel did not prove that Respondent violated the Act as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C. January 6, 2026

Michael A. Rosas
Administrative Law Judge

[31] 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 due under the terms of this Order.