Gretna Racing, LLC, d/b/a Magic City Casino *and* UNITE HERE Local 355, AFL–CIO. Case 12–CA–331395

May 7, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On December 6, 2024, Administrative Law Judge Sarah Karpinen issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Gretna Racing, LLC, d/b/a Magic City Casino, Miami, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

"(b) Within 14 days after service by the Region, post at its Miami, Florida facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 13, 2023."

2. Substitute the attached notice for that of the administrative law judge.

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[1] The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In addition, some of the Respondent's exceptions imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

[2] We agree with the judge, for the reasons she stated, that the Respondent violated Sec. 8(a)(5) and (1) by failing and refusing to furnish the Union with the opportunity to view requested relevant video surveillance footage of an incident during a housekeeping department meeting that led to the discipline of two unit employees and a resulting grievance. In adopting the judge's finding that the Respondent failed to timely raise a confidentiality defense, we find it unnecessary to pass on the judge's interpretation of Florida Administrative Code § 75-14.054, which the Respondent cited for the first time at the hearing as a basis for its confidentiality defense.

We reject the Respondent's argument that the judge erred in not finding that the information request was moot because the discipline relating to the information request had become "null and void" according to the terms of the parties' collective-bargaining agreement. We note that this argument only relates to the remedy, and not the finding of a violation, because the Board determines violations based on "the facts as they existed at the time of the union request." *Borgess Medical Center*, 342 NLRB 1105, 1107 (2004). As to the remedy, the Respondent failed to meet its burden of establishing that the Union no longer needed the video surveillance footage, as the grievance was still pending at the time of the time of the hearing. See *Boeing Co.*, 364 NLRB 158, 161 (2016).

Member Prouty notes that the Union first requested the video surveillance footage on October 20, 2023, as alleged in the complaint and consistent with the record and the facts found by the judge. Member Prouty joins his colleagues in adopting the judge's conclusion that the Respondent violated the Act by failing and refusing to provide the Union an opportunity to watch the surveillance video as requested on November 13, 2023, and in adopting the judge's recommended Order that the Respondent cease and desist from doing so and provide the Union with an opportunity to watch the video. In doing so, Member Prouty observes that no party argued on exception that the judge erred in failing to find that the Respondent violated the Act by failing to furnish the requested information since October 20, 2023. In Member Prouty's view, the Union's October 20, 2023 request for the video establishes the appropriate date of the violation, and that request was for the video to be provided to the Union's representative, the standard remedy for such violation being to furnish the Union with a copy of the surveillance video.

[3] We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decisions in *Vibe Consulting, LLC*, 374 NLRB No. 33 (2026). We shall substitute a new notice to conform to the Order as modified.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. May 7, 2026

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James R. Murphy, Chairman

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David M. Prouty, Member

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with UNITE HERE Local 355, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its functions as the collective-bargaining representative of our unit employees.

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

WE WILL provide the Union and its designees an opportunity to watch the surveillance video the Union requested on or about November 13, 2023.

GRETNA RACING, LLC, D/B/A MAGIC CITY CASINO

The Board's decision can be found at https://www.nlrb.gov/case/ 12-CA-331395 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

Susy Kucera, Esq., for the General Counsel.
Jeremy C. Branning, Esq. and *Daniel E. Harrell, Esq. (Clark Partington),* for the Respondent.

DECISION

SARAH KARPINEN, Administrative Law Judge. This case was tried in Miami, Florida, on September 10, 2024. The Complaint, based on a charge filed by UNITE HERE Local 355, AFL–CIO (the Union), alleges that Gretna Racing, LLC, d/b/a Magic City Casino (Respondent) failed to provide the Union with requested information that was relevant to the performance of its duties as the collective-bargaining representative of Respondent's employees, in violation of Sections 8(a)(5) and (1) of the National Labor Relations Act (Act). Respondent denies that it violated the Act and says that it provided the Union with the opportunity to view the information if it agreed to take steps to ensure its confidentiality. All parties were given an opportunity to present evidence, examine witnesses, and file posthearing briefs. Based on the entire record, including my observation of the demeanor of the witnesses and review of the briefs, I make the following

FINDINGS OF FACT[1]

I. JURISDICTION

Respondent operates Magic City Casino, a parimutuel casino located in Miami, Florida, and admits that in operating that business during the 12 months preceding the Complaint, it had over $500,000 in gross revenues and purchased and received goods valued over $50,000 directly from points outside the State of Florida, and is engaged in commerce within the meaningof the Act. (Answer, GC Exh. 1(h).) Based on Respondent's admissions and the entire record in this case, I find that the Board has jurisdiction over this matter under Section 10(a) of the Act.

[1] I have included specific references to the record to aid the reader, but my decision is based on my consideration of the entire record in this case, not just the portions of the record cited.

II. THE UNION'S INFORMATION REQUEST

The Union and Respondent have a current collective-bargaining agreement, in effect from September 12, 2022, to September 1, 2025, that covers "all full-time and part-time janitorial/housekeeping employees, restroom attendants, office cleaners, floor techs, casino, vault, and poker room cage/cashier employees, and count team employees." (GC Exh. 2, p. 2.) The information request at issue relates to discipline issued to two housekeeping employees. The only disputed item in that request is a surveillance video of a housekeeping department meeting.

A. September 19 housekeeping meeting

On September 19, 2023,[2] Housekeeping Manager Julio Paez gave two housekeeping employees documented verbal coaching for their conduct during a departmental meeting. (Tr. 19–22, 99, GC Exhs. 3(a) and (b) and 4(a) and (b).)[3] The coaching for the first housekeeper, M.H.,[4] states that, "[i]n a wrong way, gesticulating a lot and loudly, she approached the laundry cart and moved it in a bad way. She grabbed a container and threw it, she then replied to [Housekeeper I.] inappropriately. . ." M.H. wrote in the comment section of the form that she was showing how another housekeeper, A.P., acted, and that she threw the laundry cart to show what he did, and "didn't even speak to [Housekeeper I.]." (GC Exh. 3(b).) The discipline for the second housekeeper, who no longer works for Respondent, contained similar allegations and denials. (GC Exh. 4(b).) Paez testified that he issued the discipline based on his observation of what happened, and never watched any video footage of the meeting. (Tr. 101.)

B. Human Resources personnel view surveillance video of meeting

Human Resources Director Cross testified that she learned about the meeting after Housekeeper I. complained about it to Respondent' General Manager, John Enriquez, and that she and Human Resources Manager Perez-Ramos viewed surveillance video of the meeting so they could investigate Housekeeper I's complaint. She testified that the housekeeping manager disciplined the employees before she and Perez-Ramos watched the video (Tr. 137–138) and that she watched it before the grievances were filed and did not use it in her grievance investigation. (Tr. 169.) Manager Perez-Ramos testified that he and Cross watched the video as part of their investigation into the complaint. (Tr. 117.) He agreed that the discipline issued before he watched the video but testified that he watched it as part of his investigation into the grievance and acknowledged that it was necessary for him to watch the video and know what it showed so that he could properly respond. (Tr. 124–125.)

C. September 20 labor-management meeting

The Union and Respondent met on September 20. Organizer Daisy Mera, who is assigned by the Union to work with stewards and members to enforce the collective-bargaining agreement at the casino, attended, along with the two housekeepers who were disciplined and Union Steward Ismelda Arauz. (Tr. 23.) Human Resources Director Cross and Manager Perez-Ramos attended for Respondent. (Tr. 24.) Mera testified that they discussed the events of the previous day and that the housekeepers explained that they acted the way that they did because they were demonstrating the conduct of another employee. She further testified that Manager Perez-Ramos told the Union that he watched a surveillance video of the housekeeping meeting and described what he saw, including one of the housekeepers striking her chest. (Tr. 25–26.)

D. Union makes its initial information requests

On September 26, 2023, the Union filed grievances on behalf of the housekeepers, seeking to rescind the discipline issued to them on September 19. (Tr. 33–36, GC Exhs. 17 and 18.) The parties agreed that the September 20 meeting would serve as the first step of the grievance process, and the Union filed the grievances at Step 2. (Tr. 37–38.) The Union made information requests with each grievance seeking five categories of information, including Item 5, "A copy of any and all information gathered during the Company's investigation of the issue and used in the decision to discipline." Human Resources Director Cross responded to the requests and wrote "N/A" next to Item 5. (Tr. 34, 36, GC Exhs. 6 and 7.) Cross testified that she did not provide the surveillance video in response to this item because Manager Paez used his own firsthand knowledge, and not the video, in making the decision to discipline the employees. (Tr. 139–140.)

E. Union makes verbal and written requests for the video

The parties had a Step 2 grievance meeting on October 20. Mera, both grievants and Steward Arauz attended, along with Director Cross and Manager Perez-Ramos. (Tr. 38.) Manager Perez-Ramos testified that the Union asked how he knew that the housekeepers made threatening statements or engaged in aggressive behavior, and he explained that he watched the video, which prompted Mera to ask why the Union did not receive the video with the information it requested. (Tr. 118). Mera testified that after Perez-Ramos described what he saw on the video, she asked what video he was talking about, and he and Cross reminded her that they mentioned the video during the previous meeting. Mera said that the Union did not receive the video as part of its information request, and made a verbal request for it so the Union could see what happened during the housekeeping meeting. Director Cross told her she would need to sign a confidentiality agreement, and Mera asked her to send it to her and stated that the Union was still requesting the video. (Tr. 38–39.)

On November 3, Director Cross sent Mera Respondent's Step 2 response denying both grievances. (Tr. 41, GC Exh. 9(b)(3), GC Exh. 10.) After receiving the Step 2 denial, Mera told Cross that the Union was moving the grievances to Step 3, and asked Cross to "advise when the video will be available to view- as requested previously." (Tr. 41, GC Exh. 9(b)(3).) She followed

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[2] From here forward, all dates are in 2023 unless otherwise indicated.

[3] The disciplinary notices were written in Spanish. The General Counsel's exhibits included both the original notice in Spanish (Exhs. 3(a) and 4(a)) and an English translation by an agency language specialist who certified that the translations were accurate. (Exhs. 3(b) and 4(b).) No party objected or raised any concerns about the accuracy of the translations. I am not fluent in Spanish and relied on the translated copies of these documents when reviewing the record in this case.

[4] The nonsupervisory employees did not testify. I will refer to them in this decision by their initials.

up on November 10, stating that it was important that the Union be "able to see the video used by the Company in the decision for the disciplines." (GC Exh. 9(b)(2).) On November 10, Cross denied the request because the video "was not used by the company in the decision for the discipline." (Tr. 143–144, GC Exh. 9(b)(2).) Cross testified that she is responsible for investigating and responding to grievances at Step 2, and that although she saw the video before responding to the grievance, she did not rely on it in drafting the response and relied on Manager Paez's firsthand report instead. (Tr. 142, 176–177.)

Mera responded on November 13, stating that the managers referenced the video during the grievance meetings and said it was used in the decision to discipline, but that "[n]onetheless, there is a video of the incident that the Union has requested, and we believe it is important to the Union's case." (GC Exh. 9(b)(1).) Mera testified that later that same day she asked General Manager John Enriquez when the Union could schedule time to watch the video. He told her that the discipline was not based on the video. Mera testified that she told him that Respondent had admitted to using the video in its investigation of the incident, but that even if it hadn't, the video would still be evidence of what happened at the meeting, and the Union was requesting it to fully investigate what happened. (Tr. 45.) Enriquez said he would review the matter. (Tr. 46.)

On November 14, Mera sent an email to Enriquez confirming their conversation of the day before and asking him to respond to the Union's request to view the video, noting that the grievants confirmed that the Human Resources managers discussed what they saw in the video as a factor in the decision to discipline them and stating that the video "is relevant and important to [the Union's] investigation of these grievances." (Tr. 46, GC Exh. 9(a)(2).) On November 29, Enriquez denied the request, stating that "the discipline to the employees was solely based on what was said and not what was done. Also, we stated that the video has no sound so it is irrelevant to the process." (GC Exh. 9(a)(1).)

III. THE UNION FILES GRIEVANCE AND ULP CHARGE OVER FAILURE TO PROVIDE INFORMATION

On December 6, the Union filed a grievance and an unfair labor practice charge against Respondent for failing to produce the video. (Tr. 47, GC Exh. 11, GC Exh. 1(a).) The parties met on the information request grievance on December 20. Mera testified that both sides gave their positions, with the Union stating why the video was relevant and important to its investigation, and Respondent stating that it was not going to provide it because it not used to issue the disciplines. Mera testified that she again explained that the video was relevant because it would allow the Union to do its own investigation of what happened at the meeting. (Tr. 48.)

On December 29, Cross sent a letter to Mera confirming Respondent's denial of the Union's request to review the video, stating that the disciplines were "based upon the Manager's first-hand knowledge of the incident in question including what was said during the meeting, which the video will not provide since there is no audio." She stated that she understood that the Union was concerned about how requests for video evidence would be treated in the future and would treat any future requests for video evidence "on a case-by-case basis." (GC Exh. 12.)

A. Respondent asks Union to sign confidentiality agreement

On February 6, 2024, Director Cross sent a letter to Organizer Mera stating that Respondent would provide the requested video if the Union would sign a confidentiality agreement and withdraw its unfair labor practice charge. (Tr. 51, GC Exh. 14.) On February 8, Mera agreed to withdraw the charge after viewing the video and asked for a copy of the confidentiality agreement. (GC Exh. 13.) On February 9, Cross sent Mera a copy of the agreement. (GC Exh. 13, 14.) She testified that the agreement was the same one that had been used in the past to allow the Union's representatives to view surveillance video (Tr. 151); however, she acknowledged that the February 9 communication was the first time Respondent sent the Union a copy of the agreement in response to its request for the video. (Tr. 167.)

The agreement required, among other things, that Respondent would have the right to "designate as confidential audio and video surveillance footage which Magic City believes in good faith contains highly sensitive information" and that any footage designated by Respondent as "confidential" be used by the Union only "for purposes of investigating and, if necessary, arbitrating the grievance it filed on behalf of [M.H.]. . . " (GC Exh. 15, pars. 1–2.) Disclosure of the contents of the video was limited to Organizer Mera, along with outside counsel, experts or consultants and their staff, arbitrators and their staff, and vendors retained to assist with any arbitration. (GC Exh. 15, para. 3). It also included a clause (bullet point #4) providing attorney fees and costs to the prevailing party in any litigation enforcing the agreement. (GC Exh. 15, par. 4.)

On February 21, Mera responded to Cross, stating:

> The Union does not agree to the provisions of the Confidentiality agreement. The Union believes it is within its rights to request- as part of any filed grievance(s), or as part of the investigation of a potential grievance- video and audio footage relevant to the case. Agreeing to make the Company the decision maker on what information may harm the business or to deem something confidential could limit our ability to properly investigate an issue. Additionally, viewing the video can not be limited to just the organizer as the Union also trains and certifies shop stewards to perform investigations as agents of the Union. Lastly, the Union does not agree to bullet point #4. (GC Exh. 13.)

Mera testified that the Union's stewards are trained to investigate and process grievances and can represent the Union at Step 1 grievance meetings, and that it was important to allow them to view video evidence because they would be able to identify and explain things that she or another non-employee organizer might not otherwise understand. (Tr. 82–86.) She further testified that the Union may need to show a video to a grievant so that they can point out things that might assist the Union in processing their grievance. (Tr. 87.)

At the hearing and in its Brief, Respondent asserted that Florida Administrative Code § 75-14.054, which governs surveillance systems in pari-mutuel casinos, prevents it from allowing employees to view surveillance video. Director Cross testified that Respondent could be fined and potentially lose its license if it fails to abide by state regulatory requirements. (Tr. 147.) She further testified that Respondent does not allow employees from outside the surveillance department to view surveillance video and pointed to a regulation prohibiting employees from moving from the surveillance department directly into other casino departments as a reason for this policy. (Tr. 153–155.) She admitted that Respondent never mentioned the state regulations to the Union when responding to the Union's information request or grievance. (Tr. 159.)

Cross testified that Respondent historically denied all Union requests to view surveillance video, but that at some point, it "decided to work with the Union to see what we could do," and began allowing nonemployee union representatives to view video subject to a confidentiality agreement. (Tr. 182.) Respondent provided copies of two confidentiality agreements signed by Mera's predecessor, David Assouline, on October 16, 2016, and on November 9, 2018. (R. Exh. 11, 12.) Both agreements named Mera as a party, but she did not sign them. Cross testified that the Union never contested the confidentiality agreements in the past, and she was not aware of any employees (other than managers) being allowed to watch surveillance video. (Tr. 155–157.) Mera testified that she did not recall the confidentiality agreements Assouline signed, and that she asked Respondent for a copy of the agreements but did not receive them. (Tr. 59–60.)

B. Respondent's security procedures

Surveillance Director Octavio Jacques testified that Respondent has policies and procedures in place to ensure Respondent follows state regulations concerning surveillance in casinos and other gaming licensees. (Tr. 112.) He testified that Respondent maintains a list of people, including supervisors and directors, who can view surveillance video upon request. The people on this list don't have access to the surveillance room itself, but only the viewing room. When someone on that list requests to view video footage, that footage is gathered by a surveillance operator, supervisor or manager, and set up in the viewing room, where the viewer can "only stand and watch and not touch anything at all." (Tr. 107–109.)

IV. STATUS OF THE GRIEVANCES

The discipline issued to the employees is now null and void pursuant to the parties' collective-bargaining agreement, which states that discipline will be removed from an employee's file after 9 months. (GC Exh. 2, p. 11, Art. 12, Sec. 3.) The Union dropped its grievance for the housekeeper who left Respondent's employ but is still pursuing a grievance for the remaining grievant. (Tr. 55–56.) Mera testified that the grievant regularly asks about the video and her case, and that she asked General Manager Enriquez if they could wait to meet on the Union's Step 3 grievance until the parties resolved the issue over the video. (Tr. 50, 59.) Cross testified that the grievance was not moved to arbitration in a timely manner but acknowledged that the Union had not abandoned it. (Tr. 165–166.)

CREDIBILITY

In making my credibility determinations in this case, I considered the testimony of all the witnesses in the context of their demeanor, the weight of the evidence, the facts, the probability that the testimony was true, and the reasonable inferences that could be drawn from their statements. See *Double D Construction Group*, 339 NLRB 303, 305 (2003), citing *Daikichi Sushi*, 335 NLRB 622, 623 (2001). I also followed the general rule that credibility determinations are not "all or nothing," and that it is possible to disbelieve portions of a witness' testimony without discrediting everything that they say. See *Daikichi Sushi*, supra, at 622. My credibility findings are included in my analysis below.

ANALYSIS

Section 8(a)(5) of the National Labor Relations Act requires employers to bargain in good faith with the collective-bargaining representative of their employees. 29 U.S.C. §§ 158(a)(5). The duty to bargain in good faith includes the obligation to provide a union with the information it needs to perform its duties, including information that is "relevant to a union's filing or processing of grievances." *PAE Aviation & Tech. Services LLC*, 366 NLRB No. 95, slip op. at 3 (2018), citing *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000). Information that pertains to unit employees is presumptively relevant. Id.

I. THE UNION REQUESTED RELEVANT INFORMATION

The complaint alleges that on or about October 20, 2023, the Union verbally requested that Respondent furnish it with a video recording of an incident "that was used to decide on discipline" issued to two bargaining unit employees, that on or about November 3 the Union requested in writing "all information gathered during Respondent's investigation of the issue and used to decide on discipline. . ." including the video, and that on or about November 13, the Union requested in writing that Respondent provide it with the video, "notwithstanding Respondent's claim that it did not rely on the video recording" to discipline employees, and that Respondent failed and refused to provide the requested information. (Complaint, Par. 7.)

Respondent argues that the Union's use of the word "and" in the Union's request means that it did not have to produce the video, because it was not viewed by management until after the discipline issued, and was never viewed by Housekeeping Manager Paez, who made the decision to discipline the employees. It further argues that the video was not relevant because the employees admitted to engaging in the conduct shown on the video. (R. Br., pp. 2, 8.)

A. The Union asked to watch the surveillance video of the meeting

I find that the Union made several requests to watch the surveillance video of the September 19 housekeeping meeting, including verbally at the October 20 meeting, in writing in Mera's November 3 email asking Cross to "advise when the video will be available to view- as requested previously," (Tr. 41, GC Exh. 9(b)(3)), and verbally and in writing on November 13 when Mera asked General Manager Enriquez when the Union could "see the video" (Tr. 45) and asked Cross via email when the Union could "view the video." (GC Exh. 9(b)(1).)

It is not necessary to decide whether Respondent was justified in not letting the Union watch the video because it requested "all information gathered during Respondent's investigation of the issue **and** used to decide on discipline. . . " because the Union clarified its request on November 13. Organizer Mera sent a November 13 email to Cross stating that she disputed Respondent's claim that the video was not used to discipline the employees, but "[n]onetheless" the Union wanted the video and believed it to be important to its case. (GC Exh. 9(b)(1).) I also credit her unrebutted testimony that she told General Manager Enriquez on November 13 that the Union wanted the video even if it was not used to discipline the employees. I find that Respondent had clear notice on and after November 13 that the Union was asking to watch the video even if it was not used as a basis for disciplining the two grievants.

B. The video is relevant to the Union's role in processing grievances

A union is presumptively entitled to information pertaining to unit employees, including information that may assist the Union in processing grievances. See *PAE Aviation & Technical Services, LLC*, supra, 366 NLRB No. 95, slip op. at 3. It is undisputed that the video shows the actions of the two grievants during the September 19 housekeeping meeting. Even if Housekeeping Manager Paez did not review the video before disciplining the employees, Human Resources Director Cross and Manager Perez-Ramos both watched it before participating in grievance meetings with the Union, and Perez-Ramos acknowledged that he watched it as part of his grievance investigation and described what he saw on it in response to questions about how management knew about the housekeepers' conduct. Cross testified that she did not rely on the video in responding to the grievance, but she admittedly saw it and had the information about what it showed at her disposal. I find that the Union was entitled to access the same information so it could see what happened at the meeting.

Respondent asserts that the video is not relevant because it lacks audio and only shows the actions of the grievants, and not the motivation behind those actions. The Union is entitled to the video even if it is not "dispositive of the central issue raised by the grievance," as it may assist the Union in defending the grievants or determining whether it wants to continue with the grievances. Id. The Union does not have to accept Respondent's word for what is on the video or what is in dispute in the grievance, and "has the right and the responsibility to frame the issues and advance whatever contentions it believes may lead to the successful resolution of a grievance." *E.I. Du Pont De Nemours & Co.*, 366 NLRB No. 178, slip op. at 6 (2018), quoting *Pennsylvania Power Co*., 301 NLRB 1104, 1105 (1991) (internal quotation marks omitted).

II. RESPONDENT FAILED TO ESTABLISH THAT THE VIDEO WAS CONFIDENTIAL

An employer may withhold otherwise relevant information if it can establish that the information is confidential. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318–320 (1979). To establish a confidentiality claim, Respondent bears the burden of demonstrating that it had a "legitimate and substantial confidentiality interest in the information sought, and that such interest outweighs its bargaining partner's need for the information." *United States Postal Serv. & Am. Postal Workers Union*, 364 NLRB 230, 255 (2016). Conclusory and blanket claims of confidentiality are not sufficient; an employer must make a specific showing that the information it seeks to protect is confidential or sensitive. See *John Gore Theatrical Grp., Inc.*, 372 NLRB No. 114, slip op. at 1, fn. 3 (2023), enfd. mem., 2024 WL 4676998 (2nd Cir., November 5, 2024), citing *Pennsylvania Power & Light Co.*, supra. Once an employer establishes a confidentiality interest, it has an obligation to seek to accommodate its confidentiality concerns and the Union's need for the information. See *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004).

A. Respondent failed to make a specific showing of confidentiality

I find that Respondent failed to make a claim of confidentiality in response to the Union's request. Respondent did not refuse to provide the information on confidentiality grounds, and instead repeatedly refused to provide it based on relevancy, even in its December 29 denial of the Union's grievance over its refusal to provide the video. (GC Exh. 12). Respondent mentioned a confidentiality agreement in passing on October 20, and provided the Union with an agreement on February 6, 2024, but failed to give an explanation about why it believed the video was confidential. Simply providing a confidentiality agreement is not an assertion of confidentiality. Respondent was required to show that it had a "legitimate and substantial" confidentiality interest in the requested material before seeking an accommodation for that interest. See *John Gore Theatrical Grp., Inc.*, supra, citing *Nexstar Broadcasting, Inc. d/b/a KOIN-TV*, 370 NLRB No. 68, slip op. at 1, fn. 2 (2021), and *Pennsylvania Power Co*., 301 NLRB 1104, 1105 (1991).

B. Respondent did not assert its claim in a timely manner

A confidentiality claim should normally be raised in the "initial response to the information request." *Id*., quoting *TDY Industries, LLC d/b/a ATI Specialty Alloys & Components, Millersburg Operations*, 369 NLRB No. 128, slip op. at 2 (2020) (internal quotation marks omitted); see also *Commonwealth Elec. Co*., 373 NLRB No. 50, slip op. at 1, fn. 1 (2024) (confidentiality defense raised 2 months after initial request was untimely). Respondent did not make any claim of confidentiality (other than sending the Union a confidentiality agreement) until after the Complaint issued in this matter, and did not argue that it was prohibited by state regulation from allowing employees to watch surveillance video or that the parties agreed to treat all video as confidential until the hearing. Because Respondent failed to timely raise its confidentiality claim, no further analysis is necessary. See *United States Postal Service*, supra, 364 NLRB at 231. However, I have reviewed Respondent's arguments and found them to also be lacking on the merits, as outlined below.

C. Evidence does not establish that the parties agreed to treat all video as confidential

Respondent claims that the parties had a standing agreement that surveillance video would only be released subject to a confidentiality agreement, and that only non-employee union staff would be allowed to view it. (R. Br., p. 11.) Putting aside whether Respondent timely raised this claim, it also failed to prove it. The Board will not "lightly infer" that a union waived its statutory right to information absent evidence that the waiver was "clear and unmistakable." See *Wayne Mem. Hospital*, 322 NLRB 100, 104 (1996), citing *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) (additional citations omitted).

The evidence Respondent presented was insufficient to show there was any agreement to treat all surveillance videos as confidential.

The confidentiality agreements Respondent provided in support of its claim were signed in 2016 and 2018 and related to specific grievances. Respondent provided no evidence about what the underlying grievances were about, what was on the requested videos, or whether the Union asked that employees be allowed to see them. These agreements, standing alone, do not show that the Union agreed to treat all video as confidential going forward. See Id. (union's failure to object to employer's requirement that it get employee consent to release personnel documents did not mean that the Union agreed to abide by this requirement "for all time.").

Director Cross testified that the confidentiality agreement was the result of a discussion between the parties on how surveillance video could be shared. However, this testimony consisted of her acquiescing to conclusory statements from Respondent's counsel, as shown by this exchange:

> Q. The parties worked with one another and came up with a confidentiality agreement that you propose in this scenario to Ms. Mera; is that correct?
>
> A. That is correct.
>
> Q. And that process worked up and—for—from the beginning of the contract up until September of 2023, correct?
>
> A. That is correct. (Tr. 183.)

Cross did not provide any additional details that would demonstrate that the parties had a meeting of the minds about how all surveillance videos would be treated. Therefore, I am unable to credit the claim that the parties had a prior agreement on this subject. See *Lhoist North America of Alabama, LLC*, 370 NLRB No. 112, slip op. at 12 (2021), and cases cited therein (declining to credit testimony from Respondent's witness when they "merely capitulated to the proposition presented by Respondent's counsel, which was leading and conclusionary.").

Further, other evidence suggests that there was no prior agreement, including Cross' December 29 promise to Mera that she would treat any future requests for video evidence "on a case-by-case basis" (GC Exh. 12), and the inclusion of language in the confidentiality agreement giving Respondent the right to "designate as confidential audio and video surveillance footage which Magic City believes in good faith contains highly sensitive information" (GC Exh. 14), which would not be necessary if the issue was already resolved by mutual agreement.

D. The Florida Administrative Code does not support Respondent's claim

Respondent asserts that it is prohibited by Florida Administrative Code § 75-14.054 from allowing employees to watch surveillance video, and that it has accommodated that concern by offering to allow the Union to watch the video subject to a confidentiality agreement. The Board will consider state law to the extent it supports an employer's claim that it has a legitimate confidentiality interest in requested materials. See, e.g., *Borgess Medical Center*, supra, 342 NLRB at 1105-1106; *GTE California, Inc.*, 324 NLRB 424, 425 fn. 2, 426–427 & fn. 5 (1997). I find that the Administrative Code does not support Respondent's claim in this case.

Respondent admittedly did not mention the regulations to the Union when defending its refusal to provide the video. It also failed to raise this issue in its Answer, and stated only that it offered to allow the Union to watch the video "so long as appropriate measures are taken to ensure the confidentiality of information critical to Respondent's business (including the location of certain video recording devices critical to safety in a casino environment) . . ." (Answer, para. 6(e)). Respondent's failure to raise this issue in its many discussions with the Union casts doubt on whether the Administrative Code was behind its decision not to provide the video.

Section 75-14.054(4) of the Code provides that "[a]ccess to the surveillance system, surveillance system plan, or any related information, shall be limited to surveillance employees, the division, and [Florida Department of Law Enforcement]." Surveillance Director Jacques testified that Respondent's policies were designed to comply with state regulations. Section 75-14.054(4) does not include directors or managers from outside the surveillance department in the list of people authorized to access the "surveillance system, surveillance system plan, or any related information." However, they can watch videos in the viewing room if they follow procedures designed to keep them from accessing the surveillance room or equipment. It follows that simply allowing someone to watch video does not violate the regulation against allowing unauthorized access to the system or related information, and Respondent has provided no reason why nonsupervisory employees should not be afforded the same privilege.

Respondent also cites Section 75-14.054(6) of the Administrative Code, which prohibits employees who are assigned to the surveillance department from transferring to another department "until one year has passed since the surveillance department employee worked in the surveillance department." However, Respondent failed to present any evidence that allowing one or two employees to watch a video of a meeting in the housekeeping department would be equivalent to allowing an employee who had access to its entire surveillance system, including videos of the gaming and money handling areas, to work in other departments and potentially exploit that knowledge to the detriment of the casino or the gambling public.

III. RESPONDENT MUST ALLOW THE UNION AND ITS DESIGNEES TO WATCH THE REQUESTED VIDEO

Because Respondent failed to establish that the requested information was confidential, "no balancing of interests is required," and Respondent must allow the Union, along with its designees (including stewards and grievants) to watch the video of the housekeeping meeting without demanding a confidentiality agreement. See *Postal Service*, supra, 364 NLRB at 231–232 (2016) (ordering employer to provide information to the union without requiring confidentiality agreements or limiting the information to certain officials when employer failed to timely assert a confidentiality interest in the information), citing *Detroit*

Newspaper Agency, 317 NLRB 1071, 1072 (1995) (ordering employer to produce an unredacted copy of requested information after it made an untimely blanket claim of confidentiality).[5]

Conclusions of Law

1. Gretna Racing, LLC, d/b/a Magic City Casino (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. UNITE HERE Local 355, AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

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

> All full-time and part-time janitorial/housekeeping employees, restroom attendants, office cleaners, floor techs, casino, vault, and poker room cage/ cashier employees, and count team employees; *excluding* all other employees, all full-time or regular part-time pari-mutuel tellers (both stationary and walk around) including check cashing and lotto sales, managers, office employees, food and beverage employees, and supervisors and guards as defined by the National Labor Relations Act.

4. Respondent's failure and refusal to provide the Union, as the collective-bargaining representative of the Unit, an opportunity to watch the video it requested on or about November 13, 2023, violated Section 8(a)(5) and (1) of the Act.

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

Remedy

Having found that Respondent engaged in certain unfair labor practices, Respondent is ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I order that Respondent cease and desist from failing and refusing to provide the Union with requested relevant information and furnish the Union and its designees an opportunity to watch the surveillance video the Union requested on or about November 13, 2023.

I further order that Respondent post a notice that assures its employees that it will respect their rights under the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

Respondent Gretna Racing, LLC, d/b/a Magic City Casino, and its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with UNITE HERE Local 355, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its functions as the collective-bargaining representative of Respondent's unit employees.

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

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

(a) Provide the Union and its designees an opportunity to watch the surveillance video the Union requested on or about November 13, 2023.

(b) Post at its Miami, Florida facility copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, 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 posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice shall be mailed to all current employees and former employees employed by the Respondent at any time since November 13, 2023.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a

[5] I find that the information requested is not moot, even though the disciplines are now null and void, because there is still a pending grievance. Although there was some testimony at the hearing about whether the grievance is still timely, it would exceed my authority to make that determination, as such a finding should be made by an arbitrator. See *Midwest Div.—RMC, LLC*, 373 NLRB No. 36, slip op. at 3 (2024), citing *Wilkes-Barre Hospital Co. LLC d/b/a Wilkes-Barre General Hospital*, 371 NLRB No. 55, slip op. at 12 (2022) (information request valid despite alleged procedural defects in grievance that would have to be decided by arbitrator) and *Postal Service*, 303 NLRB 502, 508 (1991) (information request was still valid even if underlying grievance time-barred; timeliness of grievance is for an arbitrator to decide).

[6] 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.

[7] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notices must also be posted by such electronic means within 14 days after service by the Region. If the notices to be physically posted were posted electronically more than 60 days before physical posting of the notices, the notices shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 6, 2024

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively and in good faith with UNITE HERE Local 355, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its functions as the collective-bargaining representative of our unit employees.

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

WE WILL provide the Union and its designees an opportunity to watch the surveillance video the Union requested on or about November 13, 2023.

GRETNA RACING, LLC, D/B/A MAGIC CITY CASINO

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-331395 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.