

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

RALPHS GROCERY COMPANY

and

Cases Nos. 31-CA-27160
31-CA-27475
31-CA-27685

United Food and Commercial Workers
Union, Local No. 135,

United Food and Commercial Workers
Union, Local No. 324,

United Food and Commercial Workers
Union, Local No. 770,

United Food and Commercial Workers
Union, Local No. 1036,

United Food and Commercial Workers
Union, Local No. 1167,

United Food and Commercial Workers
Union, Local No. 1428, and

United Food and Commercial Workers
Union, Local No. 1442.

Rudy L. Fong-Sandoval, Atty.,
for the General Counsel,
Los Angeles, California.

Timothy F. Ryan, Atty.,
Morrison & Foerster, LLP
for the Respondent,
Los Angeles, California.

Laurence D. Steinsapir and Susan M. Swan, Attys.,
Schwartz, Steinsapir, Dohrmann & Sommers LLP,
for the Charging Parties, Los Angeles, California.

Jeffrey S. Wohlner, Atty.,
Wohlner, Kaplon, Phillips, Young & Cutler,
for Charging Parties, Locals 324 and 1167,
Los Angeles, California.

DECISION

I. Statement of the Case

LANA H. PARKE, Administrative Law Judge. This matter was tried in Los Angeles, California on February 27, 2007 upon an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the Complaint) issued December 20, 2006¹ by the Acting Regional
 5 Director of Region 31 of the National Labor Relations Board (the Board) based upon charges filed by the above-named Locals of the United Food and Commercial Workers Union (collectively the Charging Parties and individually Local plus respective number). The Complaint alleges Ralph's Grocery Company (the Respondent) violated Sections 8(a)(1) and (5)
 10 of the National Labor Relations Act (the Act). The Respondent essentially denied all allegations of unlawful conduct.

No oral testimony was presented; the record consists of a Joint Stipulation of Facts and certain documents² introduced into evidence by the Charging Parties.³

15 II. Issue

Whether the Respondent failed and refused to bargain collectively with the Charging Parties as the exclusive collective-bargaining representatives of its employees by failing and refusing to furnish the Charging Parties with requested information necessary for, and relevant
 20 to, the Charging Parties' performance of its collective-bargaining duties.

III. Jurisdiction

At all relevant times, the Respondent, a corporation with an office and places of
 25 business throughout California (the Facilities), and a subsidiary of the Kroger Company, the headquarters of which are in Cincinnati, Ohio, has been engaged in the operation of retail grocery markets. The Respondent annually derives gross revenues in excess of \$500,000 from its business operations and purchases and receives at the Facilities goods or services valued in excess of \$50,000, directly from points outside the State of California. Respondent admits, and
 30 I find, it has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Charging Parties are labor organizations within the meaning of Section 2(5) of the Act.⁴

III. Findings of Facts

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¹ All dates herein are 2005 unless otherwise specified.

² Charging Parties Exhibits 3 and 4 were received into evidence post-hearing. They are, respectively, attachments to the Respondent's June 2006 Plea Agreement pursuant to the June 2004 Grand Jury Indictment of the Respondent: Statement of Facts and Limited Waiver of
 40 Attorney-Client Privilege and Protections of Attorney Work-Product Doctrine. The Charging Parties' post-hearing motion for reconsideration of the ruling rejecting Charging Parties' Exhibits 1, 2, and 6 is hereby denied.

³ The parties agreed to change references to "the Unions" in the Joint Stipulation of Facts to "the Charging Parties. The Charging Parties sought to add to the statement of central
 45 issue in the Joint Stipulation (Page 10) the following: "and whether or not the Respondent violated the Act in any other manner," which request has been denied by separate written ruling. Post-hearing, the Charging Parties moved for reconsideration of said ruling. For the reasons set forth in the original ruling, the request for reconsideration is denied.

⁴ Where not otherwise explained, the findings of fact herein are based on party admissions,
 50 the Joint Stipulation of Facts, and the Charging Parties Exhibits 3 and 4.

A. The 2003-2004 Labor Dispute

5 The Respondent and the Charging Parties have been signatory to successive collective-bargaining agreements for decades, the penultimate of which was effective by its terms from October 4, 1999 through October 5, 2003 (the 1999-2003 Agreement) and covered a unit of numerous employee classifications described in Article 1, Section A, paragraph 1 and Appendices "A" through "H" of the 1999-2003 Agreement (the Unit).

10 In the course of negotiations between the Charging Parties and the Respondent for a collective-bargaining agreement to succeed the 1999-2003 Agreement, the Respondent, beginning October 12, 2003, locked out more than 19,000 bargaining unit employees from about 325 of its grocery markets. Thereafter, the Respondent allegedly surreptitiously rehired more than 1,000 bargaining unit employees (the Lockout Hirings), requiring the employees to work under false identities and falsifying relevant governmental and union employment reports. 15 On February 26, 2004, the Respondent and the Charging Parties agreed upon the terms of a new collective-bargaining agreement (the 2004-2007 Agreement) and unit employees returned to work.

20 B. The Kasper Letters and the Respondent's Internal Investigation/Audit

During September and October, 2004, the Respondent sent mailings to certain unit employees over the signature of Mary M. Kasper, Respondent's vice president and senior counsel (the Kasper letters), containing the following communications: 25

Letter of September 13, 2004. The Respondent notified the employee addressees of an investigation by the United States Attorney's into false payroll reports generated during the 2003-2004 labor dispute. The Respondent assured the addressees that no disciplinary actions 30 would be taken against them for working during the lockout under inaccurate names and/or Social Security numbers and requested them voluntarily to complete and return an enclosed questionnaire providing correct personnel information, which might be furnished to governmental agencies.

35 Letter of October 1, 2004. The Respondent sent a second request to the addressees of the September 13, 2004 letter, limiting the previous questionnaire request to employees who worked during the labor dispute under another's or fictitious personnel information. The Respondent informed the addressees that the information they furnished, "although confidential," would be provided to the government.

40 Investigation and Audit. The Respondent conducted an internal investigation/audit (the Audit) of the Lockout Hirings. No specifics of the contents of the Audit were adduced at the hearing; by letter of June 22, the Respondent informed the Charging Parties that the Audit had not been completed and that no final investigative report had been prepared. 45

C. Indictment of the Respondent and Guilty Plea

On December 15, 2005, a federal grand jury in Los Angeles indicted the Respondent for, inter alios, false representation of Social Security numbers and false employment reporting. On 50 July 26, 2006, the Respondent, by Mary M. Kasper (Ms. Kasper), Vice President of Legal Services, pled guilty to the following felony counts: conspiracy, use of false Social Security numbers, identity fraud, falsifying and concealing material facts in matters within the jurisdiction

of the Internal Revenue Service and the Social Security Administration, and concealment of facts from an employee benefit plan. Under the terms of its plea agreement, the Respondent paid a criminal fine and a restitution sum that included reimbursement to the Charging Parties for financial assistance given to the employees during the labor dispute. Further, any officer and/or agent of the Respondent owing fiduciary duty to any employee benefit funds was required to participate in a fiduciary training and compliance program.

D. The Charging Parties' Information Requests
and Respondent's Responses⁵

1. The Charging Parties' December 14, 2004 Information Request

By letter dated December 14, 2004, the Charging Parties requested the Respondent provide, inter alia the following: (1) names, employee numbers, store numbers and store addresses of all current and former bargaining unit employees who provided information in response to the Kasper letters, (2) for each employee who provided information in response to the Kasper letters, the information provided, including real names and Social Security numbers, false names and Social Security numbers, dates employed under a false identity, store numbers at which such employment took place, and a description of all documents, (3) copies of any documents or records provided in response to the Kasper letters, and (4) a detailed explanation of the scope of the Respondent's internal investigation and audit of work performed by employees during the lockout and its findings.

By letter dated December 23, 2004, the Respondent refused the Charging Parties' December 14, 2004 request on grounds that the information sought was not presumptively relevant to the bargaining relationship between the parties and raised confidentiality, privacy, and, with regard to the Audit, attorney-client and attorney work product privilege concerns.

By letter dated December 29, 2004, the Charging Parties expressed their willingness to meet and discuss the Respondent's confidentiality concerns and asserted, inter alia:

The information we seek is in fact directly relevant to the enforcement of various aspects of the collective-bargaining agreement...Moreover, the requested information is needed to pursue unfair labor practice charges before the Board.

By letter dated January 11, the Respondent again requested that the Charging Parties explicate the relevance of the requested information so the Respondent could determine its obligations, if any, to respond.

The Respondent furnished no information to the Charging Parties pursuant to the Charging Parties' December 14, 2004 request.

⁵ As the parties concede the communications detailed herein were sent and/or received by authorized communicants, I have not identified specific addressors/addressees.

2. The Charging Parties' May 12 Grievance

On May 12, 2005, the Charging Parties filed a grievance against the Respondent in accordance with the 2005-2007 Agreement alleging that since the lockout ended,
 5 "Ralphs...[has] discriminated against locked-out workers in favor of workers who agreed to work during the lock-out with respect to various terms and conditions of employment..." (the Grievance).⁶

By letter dated May 26, the Respondent notified the Charging Parties that it considered
 10 the Grievance defective because it did not give "written notice setting forth the exact nature of the grievance."

3. The Charging Parties' June 2005 Information Requests

By letter dated June 6, the Charging Parties further explicated the basis of the Grievance
 15 and requested information, as follows:

Our Grievance includes, but is not limited to, the following conduct by Ralphs:

- 20 a) Retaliation against bargaining unit employees who provided information about Ralphs' potential criminal conduct or who refused to work during the lockout.
- b) Favorable treatment for employees who worked during the lockout.
- 25 c) Retaliation or favorable treatment arising in connection with bargaining unit members' responses to [the Kasper letters].

To assist the Local Unions in their investigation of this Grievance, we request...the following information:

30 2) [sic] For each employee who worked under a false name or Social Security number, the employee's true name and Social Security number, the false name and Social Security number, the dates employed under a false identity, the positions in which the employee worked during the lockout, the employee's straight-time rates of pay during the lockout, and the store numbers
 35 at which such employment took place.

3) A description of all documents provided in response to [the Kasper letters] that relate to work by employees under false identities or employee
 40 refusals to work under false identities. Alternatively, please provide complete photocopies, or...arrange a mutually-convenient time and place for their inspection and copying.

4) The names and titles of all Ralphs' employees or representatives who
 45 communicated in writing with bargaining unit members concerning the information requested in [the Kasper letters], and the dates of all such communications. If such communications were written, please describe the documents in detail, provide complete photocopies, or...arrange a mutually-convenient time and place for their inspection and copying.

50 ⁶ Perhaps inadvertently, the May 12 grievance cover letter did not list Local 135 as one of the grieving locals.

5)...a complete copy of [the internal investigation and audit of work performed by employees during the lockout] with all attachments or...arrange a mutually-convenient time and place for the inspection and copying.

5 By letter dated June 22, the Respondent informed the Charging Parties that it would not provide the requested information because the Grievance failed to meet specificity requirements (i.e. dates, locations, employees involved, social security numbers, incidents pertaining to the Grievance, terms of employment, specific transfers and hours of work) and the information sought was not presumptively relevant and was confidential. Regarding the Charging Parties' request for a copy of the "investigation," the Respondent declined to produce any documents generated during the continuing investigation, as they were protected by attorney-client and attorney work product privileges.

15 The Respondent furnished no information to the Charging Parties pursuant to the Charging Parties' May and June 2005 requests. In the ensuing months, the Charging Parties declined to meet with the Respondent to discuss the Grievance because the requested information had not been furnished.

20 4. The Charging Parties' October 2005 Information Request

By letter dated October 25, the Charging Parties renewed and repeated their June 6 request for information, explaining each item's relevance to the Charging Parties' investigation and processing of the Grievance, as follows:

25 1. For each employee who worked under a false name or Social Security number, the employee's true name and Social Security number, the false name and Social Security number, the dates employed under a false identity, the positions in which the employee worked during the lockout, the employee's straight-time rates of pay during the lockout, and the store numbers at which such employment took place.

30 Relevance: This information is presumptively relevant, as it pertains to the identities and and terms and conditions of bargaining unit members. Moreover, it is directly relevant to the Grievance, as it pertains to the identities of employees who worked at Ralphs during the lockout.

35 2. A description of all documents provided in response to [the Kasper letters] that relate to work by employees under false identities or employee refusals to work under false identities. Alternatively, please provide complete photocopies, or...arrange a mutually-convenient time and place for their inspection and copying.

40 Relevance: This information, too, is presumptively relevant. The requested information concerns employee responses to [the Kasper letters]...Moreover, the information is directly relevant to the Grievance, and is necessary for the Local Unions' investigation and evaluation of the Grievance [which] concerns Ralphs' discrimination with respect to whether employees worked at Ralphs during the lockout. As this is precisely what Ms. Kasper inquired of in her letters, the information contained in employee responses is immediately relevant to the

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Grievance. The Grievance also concerns Ralphs' discrimination on the basis of bargaining unit employees' responses to the Kasper letters. For this reason, too, copies of employee responses to Ms. Kasper's correspondence are immediately relevant to the Unions' investigation and evaluation of the Grievance.

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3. The names and titles of all Ralphs' employees or representatives who communicated in writing with bargaining unit members concerning the information requested in [the Kasper letters], and the dates of all such communications. If such communications were written, please describe the documents in detail, provide complete photocopies, or...arrange a mutually-convenient time and place for their inspection and copying.

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Relevance: This information is also directly relevant to the Local Unions' ability to effectively police the Collective Bargaining Agreement. As with request two, above, this request is directly relevant to the Grievance as it concerns discrimination on the basis of employees' response to the Kasper letter. In order to fully investigate and evaluation this aspect of the Grievance, the Local Unions obviously require copies of all communications between bargaining unit employees and Company representatives. Moreover, the information is relevant as it pertains to the identities of witnesses with knowledge of the facts at issue in the Grievance.

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4. [The Kasper letters], as well as other correspondence from Ralphs, indicates that Ralphs is conducting an internal investigation and/or audit of work performed by Ralphs employees during the lockout, under either false identities of their own names, as well as of Ralphs' employment of Albertsons and Vons employees during the lockout. We request a complete copy of the investigation with all attachments, or, if the investigation is still ongoing a complete copy of all existing drafts, attachments, and evidence used in conducting and/or preparing the investigation. If Ralphs claims that its investigation(s) are privileged under the attorney-client or attorney work-product privileges, we alternately request that Ralphs furnish a complete summary of the investigation and factual findings. Alternately, please propose in writing a specific time and place for our inspection and copying of such documents.

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Relevance: This information is also directly relevant to the Local Unions' ability to effectively police the Collective Bargaining Agreement. Essential to the Local Unions' investigation and evaluation of the Grievance is complete information of the identities of the employees against and in favor of whom Ralphs is now discriminating. The full picture of Ralphs' lockout recall of bargaining unit employees is still unknown to the Local Unions, and the Local Unions do not have complete information regarding the employees who worked during the entire recall, worked during portions of the recall, and/or were solicited, but declined, to work during the recall. For this reason, Ralphs' investigation of the matter is of immediate relevance.

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The Respondent did not respond to the Charging Parties' October 25 letter and furnished none of the requested information.

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V. Discussion

A. Positions of the Parties

5 The General Counsel and the Charging Parties contend that the information sought by the Charging Parties is presumptively relevant to the Charging Parties' obligation to represent unit employees and to administer and police an existing collective-bargaining agreement.

10 The Respondent, while recognizing its obligation to provide relevant information to unions representing its employees, argues that the Charging Parties have no right to the information they seek in this instance. The Respondent contends that the Charging Parties have not met their burden of establishing the relevance of the information sought, that the Charging Parties seek the information for the improper purpose of pursuing pending unfair labor practice charges, that the Charging Parties manufactured a grievance to provide an otherwise
15 factitious basis for the requested information, and that some of the information requested was protected by the attorney/client privilege.

B. The Charging Parties' Requests for Information
and the Respondent's refusals

20 No party disputes the existence of a "general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). This obligation extends to information in furtherance of, or which would allow the union to decide whether to process, a
25 grievance. *Id.* at 436; *Bickerstaff Clay Products*, 266 NLRB 983 (1983). Information pertaining to employees within the bargaining unit is presumptively relevant to a union's representational duties, including that necessary to decide whether to proceed with a grievance or arbitration. Thus, employee personnel information, job descriptions, pay-related data, employee benefits, and policies that relate thereto are all presumptively relevant, as is similar information regarding
30 employee hires, including strike replacements. Bargaining representatives are not required to make a specific showing of the relevance of requested information unless the employer has rebutted the presumption of such. Presumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes legitimate affirmative defenses to the production of the information. *Beverly Enterprises-*
35 *Minnesota, Inc. d/b/a Golden Crest*, 349 NLRB No. 37 (2007); *JHP & Associates, LLC d/b/a Metta Electric*, 349 NLRB No. 101 (2007); *Finch, Pruyn & Company, Inc.*, 349 NLRB No. 28, FN 28 (2007); *Southern California Gas Company*, 346 NLRB No. 45, slip op. 1 (2006); *Beverly Health And Rehabilitation Services, Inc.*, 346 NLRB No. 111, slip op. 9 (2006); *River Oak Center for Children, Inc.*, 345 NLRB No. 113, slip op. 3 (2005); *Postal Service*, 332 NLRB 635 (2000);
40 *Mathews Readymix, Inc.*, 324 NLRB 1005, 1009 (1997), enfd. in relevant part, 165 F.3d 74 (D.C. Cir. 1999).

45 In situations where a collective-bargaining representative must demonstrate the relevance of the requested information to its representational duties, the burden is not severe. The relevance standard is a liberal, "discovery-type standard." *NLRB v. Acme Industrial Co.*, supra at 437; *Southern California Gas Company*, 346 NLRB No. 45 (2006); *Quality Building Contractors*, 342 NLRB 429, 430 (2004). Accordingly, information that is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power & Light Co.*, 301 NLRB
50 1104, 1104-1105 (1991). The requested information need not be dispositive of the issue for

which it is sought but need only have some bearing on it. *Id.* at 1105. "An employer must furnish information that is of even probable or potential relevance to the union's duties." *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

5 The Respondent contends that the requested information bears no relationship to any
 mandatory subject of bargaining, as the information sought concerns events that occurred
 during the hiatus between the 1999-2003 Agreement and the 2004-2007 Agreement. A union's
 collective-bargaining relationship with employees to whom it owes a representational duty is not
 10 defined by the existence of a collective-bargaining agreement; the relationship is as viable in the
 absence of a labor contract as during its term. The information sought herein relates to
 mandatory subjects and is presumptively relevant. A finding that the requested information is
 presumptively relevant resolves the Respondent's further objection that the Charging Parties did
 not adequately explain the relevance of the requested information. As noted above, a union
 15 may rely upon a presumption of the relevance of information pertaining to employees within the
 bargaining unit and has no obligation to otherwise explain its significance. Inasmuch as the
 Charging Parties were not obliged to explain the relevance of the information they sought, any
 asserted deficiencies thereof are immaterial. See *Quality Building Contractors, Inc.*, 342 NLRB
 429 (2004), quoting *Commonwealth Communications, Inc.*, 335 NLRB 765, 768 (2001): "When
 20 a union seeks information pertaining to employees within a bargaining unit, the information is
 presumptively relevant to the union's representational duties, and the General Counsel may
 establish a violation for the employer's failure to furnish it without any further showing of
 relevancy."

25 The Respondent also argues that the Charging Parties were not entitled to the
 requested information because they sought it for an improper purpose, i.e. to pursue unfair labor
 practice charges before the Board. Because the Board's procedures do not include pretrial
 discovery, the Board has found refusals to furnish information lawful where information requests
 relate to pending charges. *Saginaw Control and Engineering, Inc.*, 339 NLRB 541, 543-544
 (2003). If the request's timing and the information's relationship to the charges show the union
 30 sought the information in order to bolster its charges, the Board will not find a refusal to provide
 the information unlawful. See *Pepsi-Cola*, 315 NLRB 882 (1994).

35 In their December 29, 2004 letter, the Charging Parties stated a twofold purpose in
 requesting information from the Respondent: to enforce the collective-bargaining agreement
 and to pursue unfair labor practice (ULP) charges before the Board. On January 12, the
 Charging Parties filed with the Board the first of the ULP charges herein (31-CA-27160), which
 alleged the Respondent had violated Sections 8(a)(1) and (5) of the Act by "failing to provide
 information reasonably necessary for collective-bargaining, the investigation of grievances, and
 40 fulfilling other statutory responsibilities of a collective-bargaining representative." Succeeding
 ULP charges filed on August 18 (31-CA-27475) and January 26, 2006 (31-CA-27685)⁷,
 respectively, repeated the same allegations. While the close proximity of the first information
 request to the first ULP filing (about two weeks) superficially suggests a linkage, the substance
 of all the charges negates any such conclusion. The Charging Parties could not, logically, have
 45 sought the information at issue in order to bolster their ULP charges that the Respondent had
 refused to supply the information; no nexus exists between the information requested and the
 evidence necessary to support the charges. Consequently, the Respondent has failed to
 demonstrate that the Charging Parties sought the information for an improper purpose.

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⁷ The Region inadvertently stated the filing date on 31-CA-27685 as "01/26/05."

When, on May 12, the Charging Parties filed a grievance against the Respondent alleging discrimination against locked-out workers in favor of workers who agreed to work during the lock-out, the Charging Parties established an additional need for the information they sought. Although the Respondent argues the grievance was filed solely to mask the Charging Parties' true and improper motive for requesting the information, there is no evidence the Charging Parties were not, in fact, legitimately concerned about the impact of the Respondent's felonious conduct on terms and conditions of unit employees' employment. Indeed, it is reasonable to expect that any conscientious representative would seek full disclosure of the circumstances surrounding the Respondent's criminal acts. Even assuming the Charging Parties had more than one motive in requesting the information, "it is well established that, where a union's request for information is for a proper and legitimate purpose, it cannot make any difference that there may be other reasons for the request or that the data may be put to other uses." *Associated General Contractors of California*, 242 NLRB 891, 894 (1979). When the information requested is presumptively relevant, "it is well settled that the presumption of relevance is not rebutted by a showing that the union also seeks the information for a purpose unrelated to its representative function." *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993). The Respondent's further argument that the grievance was defective in not providing specific instances or details of discriminatory acts giving rise to the grievance likewise fails. The Respondent offers no authority for the proposition that a grievance must detail the provenance of the conduct grieved, but only urges that an inference should be drawn from the generality of the grievance that its purpose is improper. For reasons stated, I decline to infer an improper purpose and find the information sought, relating as it does to unit employees' terms and conditions of employment, presumptively relevant.⁸

The Respondent contends that some of the information requested by the Union is protected by the attorney/client privilege, specifically documents generated by the Respondent's outside counsel pursuant to the Audit. The General Counsel asserts the Respondent has not established that any documents or reports comprising the Audit were privileged and argues that even assuming any portion of the Audit met privilege requirements, the privilege was waived by the Respondent's execution of the Waiver of Privileges in the course of the federal indictment proceedings (the waiver). The waiver is titled "Limited Waiver of Attorney-Client Privilege and Protections of Attorney Work-Product Doctrine." It specifies that the waiver applies to "communications requested or inquired into by the [United States Attorney]" and provides that the Waiver "(a) [i]s effective only in the Criminal Investigation and in any criminal prosecutions that may arise from or relate to the Criminal Investigation; and (b) [d]oes not bind, and is not enforceable against, RALPHS in any judicial, legislative, administrative, or regulatory proceedings arising therefrom or relating thereto."

Once waived, the attorney-client privilege is lost in all forums for proceedings running concurrent with or after the waiver occurs. *Wal-Mart Stores, Inc.*, 348 NLRB No. 46, slip op 2 (2006), citing *Genentech, Inc. v. U.S. International Trade Commission*, 122 F.3d 1409, 1416-1417 (Fed. Cir. 1997) (waiver in district court proceeding operated as a waiver in concurrent International Trade Commission proceeding). However, neither the General Counsel nor the Charging Parties have cited any authority for the proposition that a limited waiver of specified documents constitutes a waiver of entirely different documents, even those arising from the

⁸ Because I have found the information sought by the Charging Parties is presumptively relevant, it is unnecessary to address the Respondent's contention that the Charging Parties improperly placed conditions on proposed negotiations over the information requests.

same factual circumstances. It may be that some documents included in the Audit are covered by the waiver, but, as the Respondent points out, “[t]here is no evidence in the record...that the information requested by the Union was ‘requested or inquired into by the [U.S. Attorney],’”

5 It appears that the Audit addressed information relating to the Respondent’s hiring during the lockout. Such information is, for the reasons already stated, presumptively relevant, and the Respondent is therefore obligated either to produce the Audit or to provide the Union with a legitimate explanation for its refusal. See *U.S. Postal Service*, 332 NLRB 635, 636 (2000). The “strong confidentiality interest with respect to a communication that is subject to the attorney-client privilege, which generally protects from disclosure confidential communications between attorneys and their clients for the purpose of obtaining or providing legal advice” would constitute a legitimate explanation and preclude the furnishing of such communications. See *In re BP Exploration (Alaska), Inc.*, 337 NLRB 887, 889 (2002).

15 The contents of the Audit are not expressly known, and no evidence has been adduced to demonstrate whether any of the documents and/or information comprising the Audit fit within the attorney-client privilege. However, it does not follow that the Charging Parties are stymied in obtaining such portions of the Audit as fall outside the privilege. Any dispute as to the privileged nature of the information encompassed by the Audit may be raised and litigated in compliance. See *The Earthgrains Company*, 349 NLRB No. 34, FN 1 (2007).

20 Accordingly, by refusing to provide the Charging Parties with the requested information described herein, the Respondent has violated Section 8(a)(1) and (5) of the Act.⁹

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Conclusions of Law

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
- 30 2. Each of the Charging Parties is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Sections 8(a)(1) and (5) of the Act by failing to provide the Charging Parties with the following relevant information:

35 For each employee who worked under a false name or Social Security number during the 2003-2004 lockout, the employee’s true name and Social Security number, the false name and Social Security number, the dates employed under a false identity, the positions in which the employee worked during the lockout, the employee’s straight-time rates of pay during the lockout, and the store numbers at which such employment took place.

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A description of all documents provided in response to the Kasper letters that relate to work by employees under false identities or employee refusals to work under false identities, complete photocopies of such documents, or a written proposal denoting a specific time and place for the inspection and copying of such documents.

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50 ⁹ It is unnecessary to distinguish among the various requests for information. By their information request of October 25, 2005, the Charging Parties particularized all information sought. An order requiring the Respondent to furnish the information forthwith remedies each of the Respondent’s unlawful refusals to provide information.

5 The names and titles of all Ralphs' employees or representatives who
communicated in writing with bargaining unit members concerning the
information requested in the Kasper letters, the dates of all such
communications, and if such communications were written, a description of the
documents in detail, as well as complete photocopies, or a written proposal
denoting a specific time and place for the inspection and copying of such
documents.

10 A complete copy of the Respondent's internal investigation and/or audit with all
attachments that are not shielded under the attorney-client or attorney work-
product privileges, of work performed by employees during the 2003-2004
lockout, under either false identities or their own names, as well as of Ralphs'
15 employment of Albertsons and Vons employees during the lockout. If the
investigation is still ongoing, a complete copy of all existing drafts, attachments,
and evidence used in conducting and/or preparing the investigation excepting
those shielded under the attorney-client or attorney work-product privileges, or a
written proposal delineating a specific time and place for the inspection and
20 copying of such documents. As to items that may be found privileged, a
complete summary of the investigation and factual findings.

4. The Respondent's unlawful conduct described in paragraph 3 above affects commerce within
the meaning of Section 2(6) and (7) of the Act.

25 **Remedy**

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

30 On these findings of fact and conclusions of law and on the entire record, I issue the
following recommended¹⁰

35 **ORDER**

The Respondent, Ralph's Grocery Company, its officers, agents, successors, and
assigns, shall

- 40 1. Cease and desist from
- (a) Refusing to provide the Charging Parties with the requested information
described herein, which is relevant and necessary to their responsibilities as
exclusive collective bargaining representatives of a unit of the Respondent's
employees
 - 45 (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.

50 ¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and
Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.
102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed
waived for all purposes.

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

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(a) Within 14 days from the date of this order, provide the Charging Parties with the information requested by it and described herein, which is necessary and relevant to their status as exclusive collective bargaining representative of the Respondent's employees. As to any portion of the internal investigation and/or audit that the Respondent contends is shielded from production under the attorney-client or attorney work-product privileges, provide such material(s) to the Region for consideration of the applicability of the asserted privileges.

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(b) Within 14 days after service by the Region, post at its facilities throughout California copies of the attached Notice marked "Appendix."¹¹ Copies of the Notice, on forms provided by the Regional Director for Region 31, 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. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by Respondent at any time since December 23, 2004.

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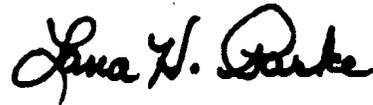
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(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

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Dated, at Washington, DC, June 14, 2007.

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Lana H. Parke
Administrative Law Judge

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¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT refuse to provide your collective-bargaining representatives with requested information needed to represent and to bargain for you.

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

WE WILL provide your collective-bargaining representatives with the requested information needed to represent and to bargain for you.

RALPH'S GROCERY COMPANY

(Respondent)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11150 West Olympic Boulevard, Suite 700

Los Angeles, California 90064-1824

Hours: 8:30 a.m. to 5 p.m.

310-235-7352

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 310-235-7123.