Southern Ohio Coal Company *and* United Mine Workers of America, District 31. Case 6–CA–24742

December 16, 1994

DECISION AND ORDER

BY MEMBERS DEVANEY, BROWNING, AND COHEN

On January 24, 1994, Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief opposing the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The 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 and to adopt the recommended Order which has been modified[2] in certain respects and restated below.

The judge found that the Respondent violated Section 8(a)(5) and (1) by refusing to provide United Mine Workers of America, District 31, with relevant requested information concerning the sale of the Martinka Mine. The Respondent excepts, arguing, among other things, that the judge's remedy and recommended Order are overbroad. The judge required the Respondent to provide District 31 with an unexcised copy of the agreement of purchase and sale for the Martinka Mine without imposing a confidentiality requirement. The Respondent contends that the agreement contained highly confidential, sensitive, and proprietary information, that it repeatedly informed District 31 of this fact, and that District 31 assured it that such confidential and proprietary information would be protected. In these circumstances, the Respondent argues that the judge should have restricted District 31 from disclosing the information. We agree. Under the circumstances of this case, where the Respondent repeatedly told District 31 that the requested agreement contained confidential and proprietary information, and where District 31 consistently responded that it was willing to sign a reasonable confidentiality agreement, we find that a confidentiality requirement is appropriate. Accordingly, we modify the judge's remedy.

REMEDY

Having found that the Respondent has violated the Act by failing and refusing to provide District 31 with a requested copy of the agreement of purchase and sale between, among others, the Respondent and the Martinka Coal Company, we shall order the Respondent to cease and desist and to supply District 31, on request, with an unexcised copy of that document. District 31 may thereafter use information contained in that agreement to the extent required to protect the rights of unit employees. The Union shall not, however, otherwise disclose the contents of the agreement to unit employees or to others.

ORDER

The National Labor Relations Board orders that the Respondent, Southern Ohio Coal Company, Lancaster, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the United Mine Workers of America, AFL–CIO by refusing the request of its agent, United Mine Workers of America, District 31, for an unexcised copy of the agreement of purchase and sale.

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

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

(a) Furnish District 31, on request, with an unexcised copy of the agreement of purchase and sale, in accordance with the provisions of the remedy section of this decision.

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[1] The judge misstated the standard set out in *Leland Stanford Junior University*. Accordingly, we substitute the following for the final sentence in sec. III,B, ''Analysis and Conclusions,'' par. 1: ''This obligation extends to information that is relevant to contract administration or contract negotiation. *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).''

Contrary to the judge's statement in sec. III,B, ''District 31's Request for Information,'' paragraph 2, the Respondent did not inform the International Union in its July 1, 1992 letter that employees of Martinka Mine no longer had panel rights with the Respondent.

Finally, in sec. III,B, ''District 31's Request for Information,'' final par., the judge incorrectly states that District 31 previously sought information from the Respondent regarding employee panel rights. As the Respondent correctly argues, District 31 previously requested and obtained panel-rights information from another employer.

After carefully examining these errors, we find that they do not affect our decision.

[2] The Respondent excepts to the judge's recommended Order arguing, among other things, that it is overbroad to the extent that it imposes a general bargaining obligation as well as requiring it to bargain in good faith by providing District 31 with information it requested. Because the standard Board remedy in information cases is limited to the latter requirement, we have modified the judge's proposed Order. See, e.g., *Knappton Maritime Corp*., 292 NLRB 236, 240 (1988); *Transcript Newspapers*, 286 NLRB 124 (1987).

Because the Respondent sold the Martinka Mine, and apparently no longer operates out of Fairmont, West Virginia, we also modify the judge's recommended Order to require the Respondent to mail the attached notice to unit employees. In his proposed notice, the judge inadvertently required the Respondent to provide District 31 with an ''excised'' rather than ''unexcised'' copy of the agreement of purchase and sale. We correct this error and substitute the attached notice.

(b) Mail copies of the attached notice, marked ''Appendix''[3] to the Union and to all employees represented by the United Mine Workers of America, AFL–CIO, who were employed by the Respondent at the Martinka Mine in July 1992, or who were laid off from the Martinka Mine after October 1991. Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with the United Mine Workers of America, AFL–CIO by refusing the request by its agent, United Mine Workers of America, District 31, for an unexcised copy of the agreement of purchase and sale signed by, among others, Southern Ohio Coal Company and Martinka Coal Company.

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, on request, furnish District 31 with an unexcised copy of the agreement of purchase and sale.

SOUTHERN OHIO COAL COMPANY

Dalia Belinkoff, Esq., for the General Counsel.
Frank G. Wobst, Esq. (Porter, Wright, Morris & Arthur), of Columbus, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. On July 24, 1992, an unfair labor practice charge was filed by United Mine Workers of America, District 31 (the Union), against Southern Ohio Coal Company (the Respondent or SOCC).

A complaint was issued on behalf of the General Counsel by the Regional Director Region 6 against the Respondent on September 30, 1992. The complaint alleges that on July 9 and on September 9, 1992, the Union requested Respondent to furnish it with a copy of the purchase and sale agreement for the sale of one of Respondent's mines; that the requested information was necessary and relevant to the performance of the Union's duties as exclusive collective-bargaining representative of a unit of Respondent's employees; that since July 20, 1992, Respondent has failed and refused to furnish the requested information, and by failing and refusing to do so, Respondent has failed and refused to bargain in good faith, in violation of Section 8(a)(1) and (5) of the Act.

Respondent filed an answer to the complaint on October 7, 1992, denying that the information requested is necessary and relevant to the performance of the Union's duties as collective-bargaining representative of the unit employees; denying that the Union requested the information described in paragraphs 10 and 11 of the complaint, but admitting that it has declined to furnish the Union with a complete copy of the entire purchase and sale agreement; and Respondent denies that by so declining, it has violated Section 8(a)(1) and (5) of the Act.

Respondent affirmatively alleges that the Union (District 31 or District) lacks standing to request the information it requested; that the requested information is not necessary or relevant to the performance to the Union's duties as representative of the unit employees; that the Union has waived whatever rights it and/or District 31 may have had to the requested information; that the requested information contains highly confidential, proprietary information; and that Respondent request dismissal of the complaint.

The hearing in the above matter was held before me on February 17, 1993, in Fairmont, West Virginia. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered along with the entire record.

On the entire record in this case, including my observation of the demeanor of the witnesses and my consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a West Virginia corporation, has maintained and operated a place of business in Fairmont, West Virginia (the facility), where it has been engaged in the mining and nonretail sale of coal.

During the 12 months preceding June 30, 1992, Respondent in the course and conduct of its business operations, has sold and shipped from its facility, goods valued in excess of $50,000 directly to points outside the State of West Virginia.

The complaint alleges, the answer admits, and I find that Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that United Mine Workers of America, AFL–CIO (the National Union) and the United Mine Workers of America (UMWA), District 31, are now, and have been at all times material, labor organizations within the meaning of Section 2(5) of the Act, but the answer to the complaint denies it is appropriate to refer to these two separate labor organizations as ''the Union.''

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Background Facts*

At all times material, the below named individuals of Respondent held the position set forth opposite their respective names, and are now, and have been at all times material, supervisors within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act as follows:

J. E. Katlic	President
Jimmy Deems	Human Resources Manager
Keith Darling	Agent of Respondent

At all times material, the National Union has been the designated exclusive collective-bargaining representative of certain employees Respondent described in the National Bituminous Coal Wage Agreement (NBCWA) of 1988 (the unit), and has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period February 1, 1988, to February 1, 1993. The above-described unit, as described in the Bituminous Coal Wage Agreement, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of the Act.

At all times material, District 31 has been a constituent member of the National Union with representational authority of Respondent's employees only to the extent as set forth in the above-described NBCW Agreement between the parties.

B. *Entities of the United Mine Workers and their Operational Performance in the Current Dispute*

Jerry D. Miller, currently vice president of District 31, formerly served as a member of the executive board of District 31. Prior thereto, he was mine committeeman with Local 8190 for 2-1/2 years. As vice president of District 31, he testified he processes grievances and requests information from employers, etc.

With respect to entities of the UMW, the International union is subdivided into geographical districts of which District 31 is one. The districts are fully autonomous labor organizations with their own constitutions and bylaws. They elect their own representatives, police collective-bargaining agreements, process grievances, and file suits on behalf of bargaining unit members who are members of the district and the International union.

District members are employees of companies that are signatory to a collective-bargaining agreement with the Mine Workers, or pensioner-members of the Union from elsewhere into the district. The constitution of the International union, UMWA, article IX defines districts and their jurisdiction (G.C. Exh. 2).

Miller continued to testify as follows:

The constitution of District 31 confers upon it the responsibility and obligation to administer and enforce terms and conditions of employment of the collective-bargaining agreement (The National Bituminous Coal Wage Agreement of 1988) (Jt. Exh. 1).

Local unions are frontline labor organizations, fully autonomous and represent bargaining unit employees at mine facilities and cites. They have their own offices and committee. They request information and process grievances. The districts enforce the national agreement, as spelled out in article IX of the constitution.

The jurisdiction of District 31 comprises 32 counties in northern and central West Virginia, which includes Martinka Coal Mine located 5 miles out of Fairmont, Route 310. Prior to July 1, 1992, Southern Ohio Coal Company (SOCC) owned Martinka Coal Mines which employed about 600 employees. Employees were laid off in November 1991 and March and June 1992.

District 31's Request for Information

It is well established by the essentially uncontroverted evidence that in letters dated July 1, 1992, Respondent (SOCC) notified the International union, UMWA, and District 31, respectively, that SOCC had sold its Martinka Mine to Martinka Coal Company; that the latter company had agreed to assume SOCC's obligations under the National Bituminous Coal Wage Agreement of 1988 (wage agreement); and that enclosed with each letter was an excised portion of the purchase and sale agreement (Jt. Exh. 3).

However, in the same letter to the International union, the International was further advised that since SOCC no longer owned the Martinka Mine, any employees who placed their names on the mine panel or other panels should look to Martinka Coal Company to exercise their seniority or recall rights, because SOCC was no longer obligated to employees of Martinka Mine and other company panels. The letter to the International was sent by certified mail, as required by the wage agreement.

The brief attachment enclosed (Jt. Exh. 3) was portions of the purchase and sale agreement further informing that the purchaser, Martinka, recognizes that Southern Ohio Coal Company (SOCC) was sold pursuant to the National Bituminous Coal Wage Agreement of 1988, and that Martinka agrees to assume Southern Ohio Coal Company's (SOCC's) rights and obligations under the agreement, provided that SOCC shall indemnify Martinka to the extent provided in article XIX for claims and losses incurred by Martinka as a result of its assumption of obligations under the wage agreement. The agreement was signed by Ohio Power Company,

Respondent (SOCC), Martinka Coal Co., and Peabody Development Co.

Eight days later, in a letter dated July 9, 1992, Jerry D. Miller, vice president of District 31, informed president of Respondent (SOCC), J. E. Katlic, that the sale of Martinka Mine has raised questions about who were the sellers and buyers, what obligations the buyers assumed, what effect the transaction had on the members; and that in order for District 31 to assure its members that their rights under the collective-bargaining agreement were preserved in this transaction, District 31 requested SOCC to provide it with a complete copy of the purchase and sale agreement. Miller also advised, if SOCC considered the agreement confidential, he, on behalf of District 31, would be willing to sign a reasonable confidentiality agreement.

Miller testified that the above letter was sent to Respondent in an effort to protect the panel rights of laid-off employees of SOCC and its other operations, subsidiaries of Electric Power Company, and also grievances concerning panel rights in the process of adjustment which existed at the time of the sale. Consequently, the laid-off employees no longer had panel rights with Respondent (SOCC) anywhere, including operations retained by (SOCC). Moreover, the notification sent to the International union indicate Ohio Power Company was a party to the sale. Miller continued to testify:

> A. So, in order to process those grievances and ensure that our employees, or our members who were employees of Southern Ohio weren't being cheated out of their contractual rights, it was necessary for us to obtain a copy of the purchase and sale agreement, to find out just what obligations were passed and which obligations were not passed.
>
> Q. Was there anything else in the portion of the Purchase and Sale Agreement that you received that triggered your request?
>
> A. Yes, ma,am, there was.
>
> Q. What was that?
>
> A. There was indication in the portion of the Sale Agreement that we received indicating that there was an Article XIX in that Purchase and Sale Agreement that apparently had something to do with indemnification, inasmuch as the excerpt indicated that Southern Ohio Coal Company would indemnify the Purchaser of the Mine, should certain things come up out of the obligations under the Collective Bargaining Agreement.

In response to District 31's request, SOCC advised in its letter of July 20, 1992, that the District's request was declined because article I of the National Bituminous Coal Wage Agreement (NBCWA of 1988) provides that the extent of a signatory's obligation to furnish information concerning the ''sale, conveyance, assignment, or transfer of its operations, is to notify the *International Union* of the transaction by certified mail to the secretary-treasurer of the International Union'' and provide ''documentation that the successor obligation (under the wage agreement) has been satisfied.''

Consequently, SOCC further advised, that since SOCC has given the International union the required notice by certified mail, with enclosed documentation of the successor's assumption, SOCC has complied with the letter of article I of the wage agreement; that SOCC was required by article I to supply that specified information to the International union, and not to any other entity, including District 31. Notwithstanding, as a courtesy, SOCC sent a copy of essentially the same material to District 31 that it sent to the International union.

SOCC's letter of July 20 further advised that it does not recognize any right of District 31 to request such information, and even if District 31 had such a right, SOCC would decline its request for a complete copy of the purchase and sale agreement, because it contains highly confidential, sensitive, and proprietary information; and virtually all of its provisions are completely and utterly irrelevant to any legitimate or legal interest of the International union or any of its affiliates.

In a letter dated July 22, 1992, to SOCC, Miller stated the District is responsible for processing grievances filed by SOCC employees who are members of the UMWA; that District 31 is not obligated to accept SOCC's assessment of whether the sale conformed to contractual requirements; that District 31 is not bound by SOCC's version of who sold and bought the mine, nor the contractual obligations assumed or passed on or assumed by the buyer, there being obligations that could not be passed on; and all of SOCC was not sold; that District 31 has the right to make such determinations for itself; and the District renewed its request for an unexcised copy of the purchase and sale agreement, pledging to sign a reasonable confidentiality agreement.

With respect to grievances pending at the time of SOCC's sale, Miller testified, without dispute, that one grievance (G.C. Exh. 4(a)) filed by a laid-off employee of Martinka Mine on behalf of an entire class of employees, was protesting Respondent's refusal to allow them to panel for employment at the Windsor operations. Another grievance (G.C. Exh. 4(b)) was also filed on behalf of an entire class of employees protesting SOCC's refusal to allow employees to panel for employment at the Windsor operations, the Central Rebuild Shop, the Cook Coal Terminal, Central Ohio Company, and Conesville Coal Preparation Plant.

After the sale a grievance (G.C. Exh. 4(c)) was filed on behalf of a class of employees protesting employer's denial of all of their panel rights after the mine was sold, and the continued denial of their right to panel for operations other than the Martinka Mine only.

Miller further testified that pursuant to article XVII of the collective-bargaining agreement, to which SOCC is a party, there are numerous provisions dealing with seniority. Some of those provisions indicate when an employee is laid off, the employee has the right to fill out a *panel form*, on which he lists jobs that he has performed, jobs that he wishes to be recalled to, and locations to which he wishes to be recalled. The form contains his length of seniority at a particular mine from which he is being laid off, an indication of how much seniority he has with the employer wherever it may have been, and he indicates which mine or operations to which he wishes to be recalled.

Additionally, a laid-off employee has recall rights under article II of the collective-bargaining agreement, to any newly opened or newly acquired mines employer (Respondent) may put into operation.

If the employer leases, leases out or contracts out a coal-mining operation on its land, the employee has a right to be

recalled by the lessee, licensee or contractor, prior to either of the latter hiring someone off the street.

The laid-off employees in question had panelled for the Martinka Mine (called the mother mine) before it was sold, for the Employer's Meigs Division, which was not sold to the Union's knowledge, and also for the Windsor and other operations listed in General Counsel's Exhibit 4(b), and now SOCC is contending the laid-off employees did not have panel rights anywhere other than Martinka Mine.

Respondent (employer) did not respond to the Union's (Miller's) letter of request of July 9, 1992, and the Union filed the current unfair labor charge on July 24, 1992. Representatives of District 31, the Local Union, and the International union met with representatives of the purchaser of Martinka Mines on July 30, 1992.

Present for Local 1949 were: Leonzie Dutch Morris, president; Dennis Cain; and Frank Waddy.

Present for District 31 were: Jerry D. Miller, vice president; Eugene Claypoole, president; and Rich Eddy, executive board member.

From the International Union was Carlo Tarley.

Representing the purchaser, Martinka Coal Co. were: Bob Ashford, former labor relations manager at Martinka; Brad Hibbs, former supervisor of employees of Peabody; and Federal No. 2 Mine, within the jurisdiction of District 31.

The purchasers had unsuccessfully tried to negotiate some changes in terms and conditions of employment at the mine with representatives of the Local. A meeting had been scheduled to further that effort. The purchaser wanted to contract out certain types of repair and maintenance work, changing portals, etc., for panel rights of employees at Martinka Mine, to its Peabody operations and its Eastern Associated Coal Corp. operations.

When Ashford and Hibbs asked Miller to sign the proposed memorandum, he noted that both Peabody and Eastern were one and the same, so he expressed his understanding to them. Hibbs said Miller was correct, but because of some legal problems, Peabody and Eastern decided to separate. Notwithstanding, employees of Peabody or Eastern continued to have reciprocal panel rights. Hibbs also informed him that Martinka Coal Company and Eastern Associated Coal were each owned by Peabody.

Miller further testified he asked Hibbs what obligations they (purchasers) assumed at the Martinka Mine and he said, ''[W]e assumed Southern Ohio's obligations only at the Martinka Mine and some obligations they did not assume. Hibbs told him the health benefits of the laid-off people prior to July 1, 1992, continued to be the obligation of SOCC, and the health benefits of worker compensation benefits and people on sick or disabled leave on July 1, 1992, continued to be the obligation of SOCC until those sick and disabled people returned to the mine. Upon their return, the purchaser would be responsible for their benefits. According to Hibbs, Miller said Peabody was the purchaser of Martinka Mine. Hibbs said the purchaser's only connection with SOCC was selling them coal and some long-wall components which had to be returned to SOCC once the long-wall finished its operation in the particular area of the mine.

General Counsel's Exhibit 5 is a copy of the memorandum of understanding that was the subject of discussion during the meeting July 30. To his knowledge, Miller said the memorandum was never executed or signed. He said since it appeared the purchase of Martinka was not Martinka Coal Company but Peabody, the Union needed to know who sold the mine and who purchased the mine, and that was a major reason for District 31's request for a copy of the purchase and sale agreement. It was obvious to him that all obligations SOCC had under the collective-bargaining agreement had not passed to the purchaser of the mine.

Thereafter, the Union went to the Secretary of State's office to review the Articles of Incorporation of the corporations which were identified on the cover page of the purchase and sale agreement sent to the Union by SOCC (Respondent). When Miller was asked what did his review at the Secretary of State's office reveal, he replied:

> I found out: that Ohio Power Company had been a corporation of long-standing duration, doing business in West Virginia and that Ohio Power had owned a company called Captina Mining Company years ago; that Captina Mining Company was capitalized with only $5,000; that its sole stockholder was Ohio Power; that in about 1971, Ohio Power, by the authority of its Board of Director, amended the articles of incorporation to change the name of the corporation to become Southern Ohio Coal Company, but that Ohio Power continued to be the sole stockholder of Southern Ohio Coal Co.

On further examination of the Articles of Incorporation of the above-named corporations, including Peabody and Martinka Coal Company, the Union (Miller) learned that Martinka Coal Company had been incorporated on May 18, 1992, in West Virginia with a capitalization of only $100, but Martinka Coal Company was going to have property in its possession over the next year valued at $53 million. To him, Miller said, this defied logic because he could not understand how Martinka could buy Southern Ohio Coal when it was capitalized with only $100. Thus, he learned that Martinka Coal Company was owned by Peabody Coal; and that the same people who owned Peabody were listed as officers and/or directors of Martinka Coal Company.

Records also indicate Martinka Coal Co. was incorporated May 5, 1992, in the State of Delaware. Peabody was capitalized with $649,650 in 1984.

Not having received a reply to its July 22, 1992 letter to Respondent (SOCC), Miller in a letter dated September 9, 1992, reminded Respondent it had not furnished District 31 with the information requested. Miller further advised Respondent that District 31 is responsible for enforcing the collective-bargaining agreement which covers SOCC's laid-off employees who are members of District 31; and that the District was presently *pursuing* various grievances filed by its employees, including grievances concerning panel rights; and that the information requested is both relevant and necessary to the District's obligation in processing them.

Miller also advised Respondent that not all of SOCC's obligations to the Martinka employees (such as medical coverage or laid-off employees, and disability benefits for employees disabled at time of the sale) were assumed by the ''purchaser.'' Those questions, Miller stated, depended upon what obligations were passed on or assumed by the purchaser, since all of SOCC was not purchased, such as panel rights to Meigs, Windsor, etc., and could not be assumed.

In a letter dated September 17, 1992, Respondent (SOCC) again advised Miller that District 31 does not have the authority to make its request for the reasons previously stated in his letter of July 22, 1992; that the extent to which Martinka Mine employees are claiming certain rights and obligations under the wage agreement are not capable of being assumed by Martinka Coal Mine Company, because such claims are governed by the 1988 wage agreement, numerous BCOA arbitration decisions and not by the purchase and sale agreement; that the latter agreement does not contain itemized provisions regarding who assumed responsibility for the items you described in your letter; and that District 31 should contact Martinka Coal Company to ascertain who purchased the Martinka Mine because the purchase and sale agreement does not contain that information.

In response to further questions by the General Counsel, Vice President Miller testified that on previous occasions unrelated to the current requests, District 31 (Miller) had requested information from SOCC regarding panel rights of employees (G.C. Exh. 7). District 31 has also previously made agreements with SOCC outside the collective-bargaining agreement regarding a stock operation plan in September 1985 (G.C. Exh. 8).

Cross-Examination

On cross-examination Miller testified that the grievance of Eddy filed July 8, 1992, had not reached the third step. He also testified that under the wage agreement the mine committee has authority to settle or withdraw a grievance as well as to request information. Miller said Eddy's grievances filed in March and May 1992 were denied by SOCC because they were requesting panel rights to mines that are not owned by SOCC. It is SOCC's position that under the wage agreement of 1988, employees of Martinka Mine have a right to panel only on other mines that are owned by SOCC.

The Union's position is that employees of Martinka were entitled to panel into mines that are owned by either of the employers that are within the American Electric Power family of companies, but that are also signatories to the wage agreement. Miller made his request as to who owns which company, and Respondent declined to supply a copy of the purchase and sale agreement. He acknowledged that SOCC has contended to pay the medical coverage for employees on layoff since the sale, but continued the Union is uncertain that practice will continue without seeing the purchase and sale agreement.

According to Miller, article IX, section 6, page 68 of the United Mine Workers Constitution delegates authority to District 31 for administration of contracts. However, SOCC contends without dispute that District 31 nor the International union ever furnished SOCC a copy of the Local's constitution or such a provision thereof.

Keith Darling, labor relations manager for American Electric Power Service Corporation also assists in all areas of labor relations including the administration of the wage agreement with SOCC along with other subsidiary companies which are signatory to the wage agreement of 1988. Darling acknowledged he wrote the letter of July 1, 1992 (Jt. Exh. 4), for Respondent's president, J. E. Katlic, to sign, based on the information in the wage agreement of 1988 (Jt. Exh. 1). He further testified that Respondent did not respond to Miller's letter of request of July 9, 1991 (Jt. Exh. 5), because the National agreement provides that SOCC (seller) is required to notify the International union in a specific way when it sells a mine (Martinka). Since Respondent had complied with that provision by notifying the International Union and had not heard from the International that Respondent's notice was unsatisfactory, it did not think it needed to respond to District 31's request. He said Respondent also felt that District 31 did not have the standing to make the request. This is so, he said, because District 31 would normally make such a request at the third step of a grievance and the subject grievances had not reached the third step of the grievance procedure. Additionally, he said, the purchase and sale agreement contains confidential and binding provisions.

Darling further testified that Joint Exhibit 6 is SOCC's letter in response to Miller's (District 31's) letter of request of July 9. He said SOCC received Joint Exhibit 7, the second letter of request from District 31 (Miller) dated July 22, but did not respond to it because Respondent received the unfair labor practice charge on that same day and the grievance mentioned in District's 31's letter of request (Jt. Exh. 7), was still pending at the second step. He said, in the past, whenever the District requested information at the second step, it was denied by Respondent, and that there is nothing in the wage agreement of 1988 which conferred authority on District 31 to enforce the agreement. He cites as authority for his contention, article XX, section E, item 6 on page 131 of the wage agreement which provides as follows:

> (6) Disputes arising under this Agreement *with regard to the Employer Benefit Plan established in (c)(3) above* shall be resolved by the Trustees. The Trustees shall develop procedures for the resolution of such disputes. Decisions of the Trustees shall be final and binding on the parties. Such disputes shall not be processed under the provisions of Article XXIII (Settlement of disputes).

Darling further testified that if an employee has a dispute involving medical insurance payments they follow the resolution of dispute procedure, and no laid-off employee of Martinka has filed such a claim. He said all disability benefits had been paid since the time of the sale and no employee has filed a grievance for such benefits. It is his understanding that District 31's authority flows from the labor agreement. The International union nor District 31 has given the Respondent a copy of the constitution of the United Mine Workers of America.

Darling acknowledged Miller offered to sign a reasonable confidentiality agreement, and that the company made no reference to confidentiality, other than to assert the information requested was confidential without any reasons. He also acknowledged American Electric Power is a public utility and information about its transactions is public to investors; and that Martinka Coal Co. assumed no obligations to employees of Meigs.

It is clear from the documentary communication between District 31 and Respondent (SOCC) that the testimony of witness Jerry Miller, for District 31, and Respondent's witness Keith Darling, that the following issues are raised by the evidence and now presented for determination:

Issues

1. Whether District 31 had the legal authority to request a complete copy of the purchase and sale agreement.

2. If District 31 in fact had legal authority to make the information request, whether the requested complete copy of the Purchase and Sale agreement was relevant and necessary for the performance of District 31's statutory duty in representing the members of District 31.

3. Whether Respondent's (SOCC's) refusal to provide District 31 with a complete copy of the purchase and sale agreement constituted a failure and refusal to bargain in good faith, in violation of Section 8(a)(1) and (5) of the Act.

With respect to District 31's legal authority or standing to request a complete copy of the purchase and sale agreement, counsel for the General Counsel argues that District 31 has the standing and authority to request the subject information pursuant to provisions of the following:

General Counsel's Exhibit 1: page 2 of the Bituminous Coal Operators Association (BCOA's) wage agreement of 1988 which provides in part:

> It is agreed that at operations covered by this Agreement, United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the Employees of the parties of the first part. It is further agreed that as a condition of employment all Employees at operations covered by this Agreement shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this Agreement.''[1]

Article XXIII, section (c) of the agreement, under ''Grievance Procedure,'' provides that the four grievance steps are as follows:

> 1. Employee makes complaint to immediate foreman for resolution.
> 2. If unresolved, the complaint should be submitted on BCOA-UMWA Standard Grievance Form, and tendered to the Mine Committee and Mine Management.
> 3. If unresolved, the grievance is referred to the District Representative and the Employer.
> 4. If unresolved, the matter is referred to a District Arbitrator.

Article XXVI, section (a) of the agreement provides that new districts may be established by the UMWA, and districts may enter into contracts and agreements with employers, provided such agreements do not conflict with the National agreement; and articles II and XVII *provide the framework for panel rights of laid off employees.*

Counsel for the General Counsel notes that the agreement does not preclude the District from bargaining with an employer, as long as the parties are willing to negotiate and any understanding reached does not conflict with the wage agreement. Additionally, she argues, the parties are required to provide full disclosure of information with respect to grievances, as in collective-bargaining. It is noted that counsel for the General Counsel does not cite any specific language or provision of the agreement for the latter, added statement. She maintains that the agreement thoroughly contemplates districts as being representatives of employees of signatories' mines and other coal operations; and that District 31 currently represents employees at the Martinka Mine with the Local and the International union.

Respondent's Argument

On the contrary, Respondent argues that the wage agreement of 1988 is between SOCC and the International union as bargaining representative of Martinka Mine employees since 1974; that District 31 is not the recognized bargaining representative of the Martinka Mine employees; and that consequently, District 31 does not have the authority to request a complete copy of the purchase and sale agreement unless it made the request in the capacity of an agent of the International; and that the evidence of record fails to establish that District 31 had actual, general, specific, or apparent authority to act as an agent of the International union in making its request.

Respondent cites appropriate legal authority for its lack-of-agency theory of defense as follows:

> ''affiliates of a National or international labor organization are not presumed by the mere fact of their affiliation to be agents of the latter,'' *Bacino v. American Federation of Musicians*, 407 Fed. Supp. 548 (N.D., ILL. 1976), citing *Colorado Coal Co. v. United Mine Workers*, 268 U.S. 295 (1925), and *United Mine Workers v. Colorado Coal Co*., 259 U.S. 344 (1922); but that existence and scope of agency must be determined under common law agency principles. *Metro Products, Inc. v. NLRB*, 884 F2d 156, 159 (4th Cir. 1989); and that the burden of such proof is upon the party asserting an agency relationship, which in the instant case, is upon the General Counsel. *Sunset Line and Twine Co*., 74 NLRB 1487, 1508 (1948); and the General Counsel has failed to carry that burden.

Conclusion

However, counsel for the General Counsel further argues, and I agree, that provisions of articles XVI, XXIV, II, and XVII (Jt. Exh. 1) of the above discussed Bituminous Coal Operators agreement, as well as the undisputed testimony of witness Miller, demonstrate that the constitution of the United Mine Workers authorizes the formation of Districts, which have the responsibility to implement and administer all collective-bargaining agreements covering any members of the district.

Although Respondent contends it was not given a copy of the UMWA's constitution (G.C. Exh. 2), such fact alone does not invalidate provisions under the above-cited articles of the UMWA's constitution, or any actions taken by District 31 pursuant to them. In fact those provisions, along with the factual evidence of District 31 processing member-employees' grievances concerning panel rights of Martinka Mine member-employees constitute evidence District 31 has and exercises authority to represent them in that capacity.

[1] Counsel for the General Counsel argues that ''the BCOA Agreement does not disclaim the Local or Districts as components of the International Union, but rather, provides numerous significant and legitimate roles for both the Districts and the Locals in administering the contract.''

Additionally, article 9, section 6 of the UMWA's constitution further provides that ''the District through its Officers and Executive Board, shall be responsible for implementing and administering all collective-bargaining agreements covering all members of the District, and shall take appropriate measures to ensure that those agreements are *fairly applied, fully enforced, and faithfully obeyed*.'' Although District 31 is an autonomous labor organization, it nonetheless exists under the jurisdictional authority of the International union in representing member-employees of signatory employers of mine workers in its district. Moreover, Respondent admits District 31 is a labor organization within the meaning of the terms of the Act.

Certainly by processing grievances of member-employees of signatory employers under the established grievance procedure of the collective-bargaining agreement of 1988, District 31 is acting pursuant to its authority under, and in proper compliance with, the above-cited provisions of the constitution of the UMWA.

Since the UMWA's constitution clearly delegated authority to the districts to process grievances, especially to administer and fully enforce collective agreements covering employees and their panel rights, I find that District 31 is properly processing and enforcing the contract on the instant grievances within the scope of its delegated authority, as agent of the International union. The authority to process grievances is a significant component of the collective-bargaining process. Possessing the authority to enforce a collective bargaining agreement, including, processing grievances without the authority to request information relevant and necessary to that particular function, would often result in a sterile authority.

Conclusion

Consequently, based upon articles XVI, XXIV, IID, and XVII of the wage agreement of 1988, article IX of the UMWA's constitution, and actual grievance processing of District 31, I find that District 31 is legally an agent of the International union, and as such, has the statutory obligation and authority, along with the International union, to properly request information and diligently represent and process grievances of employees at the Martinka Mine, *Postal Service*, 302 NLRB 767 (1991).

Confidentiality

Article XXIII, section (a) of the wage agreement of 1988, provides:

> The Mine Committee shall have the authority on behalf of the grievant to settle or withdraw any grievance at step 2 or proceed to step 3.

Respondent argues that article XXIII means that only the mine committee has authority to process the subject grievances, and that District 31 does not have authority to handle a grievance until it is referred to step 3.

It is particularly noted, however, that the above-cited article XXIII does not specifically state that only the mine committee can request information relevant and necessary to processing a grievance. The record does not show whether the mine committee requested District 31 to request the subject information on its behalf, and it does not show that the mine committee had any objection to District 31 making the request. In the absence of such evidence I do not read article XXIII(a) as so limiting. In fact, if the requested information is received by the mine committee the grievance may very well be resolved at step 2 and there may not be a need for it to be referred to the third step.

Therefore, I conclude and find that the language of article XXIII(a) is not necessarily so limiting as Respondent urges, and I further find that it does not preclude District 31 from making the subject request.

Analysis and Conclusions

It is well established that an employer must comply with a union's request for information that will assist the union in fulfilling its responsibilities as the employees' statutory representative and a part of its duty to bargain in good faith. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979). The requested information must be relevant to both contract administration and contract negotiations, *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982).

Moreover, the standard applied in determining relevancy in these circumstances requires that the information requested simply have some bearing on the issue for which the information is requested and be of probable or potential relevance to the Union's duty. *Pfizer, Inc*., 269 NLRB 916, 918 (1984). In the instant case the requested information relates to rights of employees to panel for employment at mines which may or may not have been sold by the employer.

However, a sale of a business agreement is not presumptively relevant to a union's representative function because such an agreement ''does not relate directly to the terms and conditions of employment of the employees represented by the Union.'' *Super Value Stores*, 279 NLRB 22, 25 (1986). In discharging its burden of relevance of a sale agreement, ''the Union's theory of relevance must be reasonably specific; that general avowals of reliance such as 'to bargain intelligently' and similar boiler plates are insufficient.'' Id., quoting *Soule Glass & Co. v. NLRB*, 652 F.2d 1055, 1099 (1st Cir. 1981).

Relevant and Necessary

The uncontroverted and credited evidence shows that prior to the sale of the Martinka Mine, two separate grievances were filed and pending on behalf of two different classes of employees, one protesting Respondent's refusal to allow employees at Martinka the right to panel for employment at SOCC's Windsor operations, and the other protesting Respondent's refusal to allow employees to panel for employment at the Windsor operations, the Central Rebuild Shop, the Cooke Coal Terminal, Central Ohio Company, and Conesville Coal Preparation Plant.

Another grievance was filed after the sale of the Martinka Mine, demanding Respondent to allow laid-off employees to panel for and be recalled to SOCC's other operations, and that such rights are affected by seniority and recall rights under the collective-bargaining agreement of 1988.

SOCC acknowledged at the trial, that it had a mine operation called the Meigs Division. Since neither the notice nor the announcement to the Union advised that the Meigs Division was also sold, District 31 believed it had a valid grievance concerning panel rights to the Meigs Division and other

mine operations of SOCC. Consequently, since the District had been advised that the Martinka Mine had been sold and it was not clear whether laid-off employees could panel to SOCC's other mines, the District requested a complete copy of the purchase and sale agreement to enable it to determine strategies and defenses for processing the grievances, and verifying SOCC's assertion that the employees could no longer panel SOCC for employment at its other mines.

Counsel for the General Counsel presented uncontroverted evidence that article VII of the wage agreement of 1988 contains numerous provisions dealing with layoffs, seniority, and recall rights, which affect panel rights when an employee is laid off (such as the right to fill out a panel form listing preferences for jobs previously worked, jobs desired, and job locations to which the employee wishes to be recalled); that District 31 could not determine from the excised copy of the purchase and sale agreement suppliedby Respondent, who sold, who bought, and who now owns Martinka Mines, or what obligations were assumed or not assumed. Moreover, evidence from the Secretary of State's office and information obtained in the July 30 meeting with the asserted owners of Martinka Mine, tend to indicate some confusion as to who bought and who now owns Martinka Mine, and what contractual obligations were assumed or not assumed by the purchaser of the mine.

District 31 described most of the above concerns in its July 9 letter of request for a complete copy of the sale agreement, as being relevant and necessary to, and/or having a bearing on its statutory performance in representing and processing the afore-described grievances of its member-employees of Martinka Mine.

Respondent, however, contends that the request for a complete copy of the purchase and sale agreement is not relevant and necessary to the statutory obligation of District 31 in representing the Martinka Mine employees because:

1. The purchase and sale agreement does not contain the information sought by District 31.

2. Under the last paragraph on page 29 of the purchase and sale agreement furnished to District 31, Martinka Coal Company agreed to be the ''successor'' employer of Martinka Mine employees. MCC has also assumed the obligations of a ''successor'' under the BCWA wage agreement of 1988, that provides, as between SOCC and MCC, Respondent (SOCC) shall indemnify SOCC to the extent of SOCC's indemnification obligations as set forth in article XIX for claims or losses incurred by MCC, by reason of the latter's assumption of obligations under the wage agreement (concerning temporary and permanent assigned work classifications, and seniority preference on temporary assignments).

District 31 contends it needs a complete copy of the purchase and sale agreement to determine the following:

1. Panel rights.

2. Responsibility for continuation of medical insurance coverage of employees on layoff status at the time of the sale.

3. Responsibility for the continuation of disability benefits of employees on leave at the time of the sale.

Respondent (SOCC) argues that it previously informed District 31 and now argues that the purchase and sale agreement does not contain any of the above three requests, including anything on panel rights, which were assumed by MCC.

4. Who sold, who bought, and who owns the mine.

With respect to item 4, above, SOCC further argues that it has provided District 31 with an excised copy of the sale agreement indicating that MCC recognized the mine was being sold pursuant to the wage agreement of 1988; that MCC assumed SOCC's rights and obligations under the agreement and that the assumption includes panel rights of employees.

At the trial Respondent contended the sale agreement does not contain any provision regarding which employer is responsible for providing medical insurance benefits to employees who were on layoff status. Manager Darling testified it would have been inappropriate to include such a provision in the sale agreement because decisions of the UMW's Health and Pension Fund trustees, have held that responsibility for medical insurance benefits to employees who were on layoff at the time of a sale, cannot pass on to the purchaser of the mine. Moreover, SOCC is paying all of such benefits and no grievance has been filed indicating otherwise. I credit Darling's account that the Health and Pension Fund trustees have held that such benefits cannot be passed on to a purchaser of a mine. However, this information at the hearing does not exonerate Respondent from the duty to furnish the requested information, especially at the time the request was made in July 1992.

Respondent argues that Vice President Miller latently testified he needs to see the complete purchase and sale agreement to know who sold and who bought the Martinka Mine because Ohio Power Company (Ohio Power) and Peabody Development Company (Peabody) signatures are on the copy of the incomplete agreement along with the signature for Martinka Coal Company (MCC) Respondent had Miller to acknowledge Miller knew prior to the sale, that all coal produced by Martinka Mine went to Mitchell Power Plant; that it was common knowledge Ohio Power owned SOCC and the Mitchell Power Plant; that Miller admits he had been told MCC is owned by Peabody; that by agreement Peabody provides coal to Ohio Power's Mitchell Power, and Respondent submits that Miller knows these are the reasons for the signatures referenced on the agreement. Respondent further argues that if Miller did not know the above facts, it is strange because Miller did not ask MCC officials these questions when he met with the purchaser of Martinka Mine July 30.

Although Respondent makes an interesting argument why District 31's request for a copy of the complete sale agreement was not relevant and necessary for the Union to perform its statutory duties, I am not persuaded that Respondent has refuted the evidence that the information requested was relevant and necessary to the Union's statutory function. Respondent assumes that District 31 representative, Miller, should have known why signatures for Ohio Power Company and Peabody Development Company appeared on the excised copy of the sale agreement. Notwithstanding, even if Miller should have known, had heard, or actually had known the reasons for the signatures on the agreement, such fact would not necessarily mean that Miller actually knew or that he had actually heard the reasons the signatures appeared on the excised copy of the agreement. Moreover, assuming Miller in fact knew why the subject signatures appeared on the excised copy of the sale agreement, such knowledge would not have

necessarily satisfied Respondent's obligation to supply Miller with a complete copy of the sale agreement.

Nor should the fact that Respondent told the Union (District 31) its version of what is in, or what is not in, the sale agreement satisfy the Union's right to have access to an unexcised copy of the sale agreement. Nor did Respondent's version of what was relevant and necessary relieve Respondent of its obligation to supply the requested information. It is not the province of the employer to decide what information the Union needs to properly evaluate the merits of a grievance. It is the Union's right to frame the issues and advance theories as it sees fit. *Conrock Co*., 263 NLRB 1293 (1982); *United Technologies Corp*., 274 NLRB 504 (1985).

It is also not the province of the employer to arbitrarily piecemeal the information it supplies in response to the information requested. As the Board has held in *American Telephone & Telegraph Co*., 250 NLRB 47 (1980); *Kroger Co*., 226 NLRB 512 (1976), that in supplying requested information, the employer must satisfy the Union's need for assurance and accuracy of the information sought. Additionally, the Union is not required to establish in advance exactly how the information sought would be helpful in pursuing the grievance. *Blue Diamond Co*., 295 NLRB 1007 (1989).

Counsel for General Counsel argues that Respondent's undescribed Exhibit 1 grievance filed September 1, 1992, and resolved February 16, 1993, and Respondent's Exhibit 2, District 31's request for information from American Electric Power Service Corporation, are different from the subject grievances filed March, May, and July 1992, and are distinguishable from and irrelevant to the instant proceeding. I agree that the grievances offered by Respondent relating to an unfair labor practice charge involving American Electric Power Service Corporation are irrelevant to the current proceeding. Therefore, none of the grievances are considered in disposing of the grievance issues herein, relating to rights of member-employees to panel for employment at SOCC's other mining operations and other employees' contract interest which may have been affected by the sale transaction.

I therefore conclude and find upon the foregoing essentially uncontroverted evidence and cited legal authority, that the Union's request for a complete copy of the purchase and sale agreement was relevant and necessary to its processing the subject employees; grievances concerning their contract right to panel for employment at Respondent's (SOCC's) other mining operations, as well as for other employees' interest which may have been affected by the sale transaction. Under such circumstances, Respondent was legally obligated to supply the information (unexcised copy of the purchase and sale agreement). *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); *Bickerstaff Clay Products*, 266 NLRB 983 (1983).

Moreover, the Board has held that requests for sales information by a union to determine successorship obligations are relevant to a union's statutory duty in representing its member-employees. *Westwood Import Co*., 251 NLRB 1213 (1980). The Board has further found that a purchase and sale agreement is relevant and necessary to a union's responsibility in representing its members. *RBH Dispersions, Inc*., 286 NLRB 1185 (1987); *Washington Star Co*., 273 NLRB 391 (1984).

Respondent has affirmatively alleged that District 31 waived whatever right it had to request information. However, Respondent offered no evidence to support this allegation. Notwithstanding, the Board has repeatedly held that the relinquishment of a statutory right, such as the right to request relevant and necessary information, must be supported by ''clear and unmistakable'' evidence. *Clinchfield Coal Co*., 275 NLRB 1384 (1985). Since the evidence of record fails to demonstrate such a waiver, I find that the Union (the National nor District 31) did not waive their right to request relevant and necessary information in representing their members.

Consequently, based upon the foregoing evidence, cited legal authority, and reasons, I find that Respondent's refusal to supply District 31 with an unexcised copy of the purchase and sale agreement constituted a failure and refusal to bargain in good faith, in violation of Section 8(a)(1) and (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in close connection with its operations as described in section I, above, have a close, intimate, and substantial to trade, traffic, and commerce upon the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act, we shall order that it cease and desist from and take certain affirmative action to effectuate the policies of the Act.

Having been found that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, by refusing to furnish the Union relevant information requested by the Union for its evaluation and processing grievances under the collective-bargaining agreement, Respondent has failed and refused to bargain with the Union in good faith, in violation of Section 8(a)(1) and (5) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such conduct.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from or in any like or related manner interfering with, restraining and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co*., 120 F.2d 532, 536 (4th Cir. 1941).

Upon the basis of the above findings of fact, and upon the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Southern Ohio Coal Company, the Respondent, is and has been at all times herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mine Workers of America, AFL–CIO (the National Union), and District 31, its affiliate (collectively the Union), have been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. The National Union has been the exclusive collective-bargaining representative of certain employees of Respondent

as described in the national Bituminous Coal Wage Agreement of 1988, and has been recognized as such, and such recognition has been embodied in successive collective-bargaining agreements.

4. District 31, a constituent member of the National Union, is and has been an agent of the National Union, acting on its behalf in administering the collective-bargaining agreement for the employees in the following appropriate unit:

> Certain employees of Respondent as described in the national Bituminous Coal Wage Agreement of 1988, herein called 'the Unit,' is and has been recognized as such representative by Respondent.

5. By failing and refusing to furnish the Union relevant and necessary information requested by the Union to assist it in evaluating and effectively performing its representative function in processing employee grievances, Respondent has violated Section 8(a)(1) and (5) of the Act.

[Recommended Order omitted from publication.]