Local One-L, Amalgamated Lithographers of America *and* the Metropolitan Lithographers Association, Inc. Case 2–CB–21027

July 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On January 29, 2008, Administrative Law Judge Mindy E. Landow issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local One-L, Amalgamated Lithographers of America, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

Nicole A. Buffalano, Esq., for the General Counsel.

Thomas M. Kennedy and *William G. Schimmel, Esqs. (Kennedy, Jennik & Murray, P.C.),* of New York, New York, for the Respondent.

G. Peter Clark, Esq. (Kauff, McClain & McGuire, LLP), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MINDY E. LANDOW, Administrative Law Judge. The Metropolitan Lithographers Association, Inc. (the MLA or Association) filed the charge in this case on February 5, 2007,[1] and the Regional Director for Region 2 of the National Labor Relations Board (the Board) issued a complaint on June 29. The complaint alleges that Local One-L, Amalgamated Lithographers of America (the Union or Respondent) violated Section 8(b)(3) of the National Labor Relations Act (the Act) by failing and refusing to furnish information requested by the MLA that was relevant to the enforcement of the collective-bargaining agreement between the Union and the Association. The Respondent filed a timely answer in which it denied that it had violated the Act, and raised a number of affirmative defenses, discussed below. A hearing on the complaint was held before me on October 3, in New York, New York. Briefs have been filed by the parties and have been carefully considered.

On the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The MLA is a multiemployer association whose constituent members are located at various locations in and around the states of New Jersey and New York, and are engaged in the business of providing printing services to commercial customers. Annually, in the course and conduct of their business operations, the employer members of the MLA, in the aggregate, perform services for customers located throughout the United States in excess of $50,000. It is admitted, and I find, that the MLA is and has been an employer within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted, and I find, that the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] We affirm the judge's conclusion that Respondent Union violated Sec. 8(b)(3) by refusing to supply information requested by Charging Party Metropolitan Lithographers Association, Inc. (MLA) in pars. 8, 12–21, and 28–33 of a letter dated February 13, 2007. The General Counsel does not except to the judge's conclusion that the Respondent did not unlawfully fail to provide information requested in pars. 1–3 and 5–6 of the same letter.

Chairman Schaumber does not necessarily agree with Board precedent holding that a requester may simply state a reason for its information request without giving any factual basis for the request. See *Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (3d Cir. 1997). Here, the judge found that the memorandum of understanding (MOU) between the Respondent and Barton Printing, on its face, raised objective factors that supported a reasonable belief that a relationship existed between Barton Printing and Barton Press, and the Respondent did not except to this finding. Moreover, the MLA raised additional objective factors at the hearing apprising the Respondent of the relevancy of its information requests, and the Respondent has continued to withhold the requested information. Under these circumstances, Chairman Schaumber would find the violation. See *Dodger Theatricals Holdings, Inc.,* 347 NLRB 953, 953 fn. 3 (2006).

The Respondent did not except to the judge's rejection of certain of its affirmative defenses, namely that: the limitations period of Sec. 10(b) should bar litigation of the 8(b)(3) allegation; some of the requested information is confidential; the MLA's true purpose in making its request was to obtain information to be used against commercial competitors; requiring production of the information would violate antitrust laws; and compliance with the request would be unduly burdensome.

The Respondent does except to the judge's rejection of its affirmative defense that the information request dispute should be deferred to the parties' grievance and arbitration system. Chairman Schaumber views the information request as covered by the parties' contractual arbitration clause and would defer the request to arbitration. See *Team Clean, Inc.*, 348 NLRB 1231, 1231 fn. 1 (2006). He recognizes, however, that Board precedent is to the contrary. See, e.g., *Shaw's Supermarkets*, 339 NLRB 871, 871 (2003) (stating that "[t]he Board has a longstanding policy of nondeferral to arbitration in information request cases"). Accordingly, for institutional reasons, he concurs in finding that the Respondent violated Sec. 8(a)(5) by failing to furnish the requested information.

[1] All dates are in 2007 unless otherwise specified.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties' Collective-Bargaining Relationship and Relevant Contractual Clauses

Respondent is a labor organization representing employees in the printing trades. The MLA is comprised of six employers in the printing industry, five of which are engaged in commercial printing. The MLA and Respondent have a longstanding collective-bargaining relationship and are parties to a collective-bargaining agreement (CBA or Agreement) currently effective from July 1, 2005, through June 30, 2009. Paragraph 3A of the Agreement defines the unit as follows:

> The Employers recognize the Union as the exclusive collective-bargaining agent for all of the lithographic (offset) production Employees in the plants or departments of the Employers within the Union's territorial jurisdiction. The term "lithographic production employees" ("hereafter referred to as "Employees," shall mean those employees engaged in the manufacture of lithographic work including working foremen as well as nonworking foremen and supervisors of such employees, but excluding plant managers, assistant plant managers, and all other managerial employees.
>
> Excluded also are: sales, professional, sketch artists, office and clerical employees. This contract shall not apply to any employees in existing plants or departments located outside the "New York and New Jersey Districts" as that term was defined in the Agreement between the Union and the Association, effective May 1, 1973, to April 30, 1976, which were not covered by said Agreement.[2]

The entire Agreement is subject to arbitration pursuant to section 38, "Grievances and Arbitration," which states in relevant part:

> (a) In the event of any dispute with reference to the interpretation [,]application or breach of any of the terms contained in this contract, the matter shall be taken up in the following manner: . . . (4) if a decision by a majority of the Joint committee is not reached . . . the matter shall be submitted to an impartial arbitrator to be selected unanimously by the members of the Joint Committee, and in the absence of such unanimous agreement, either party may submit the matter for arbitration to the American Arbitration Association, to be arbitrated pursuant to their rules.

The grievance arbitration provision of the Agreement contains no specific reference to the adjustment of disputes arising over the production of information from one party to another.

Section 40 of the Agreement, entitled, "Better Contracts," is essentially a "most-favored nations" clause and provides as follows:

> 40.(a) In the event the Union grants or intentionally permits any employer engaged in the commercial lithographic printing industry within the territorial jurisdiction of the Union more favorable terms than those applicable to the Employers covered by this Agreement, the Association shall have the right to demand that such more favorable terms are deemed to be part of this agreement; provided however, that this provision shall not apply to any employer who, as of the effective date of the Agreement (a) has never been covered by any agreement with the Union; or (b) is already a party to an agreement with the Union granting such Employer more favorable terms than are contained herein. With respect to agreements with an Employer engaged in the commercial lithographic printing industry within the territorial jurisdiction of the Union to which the Union has or will become party as a result of a merger of another union into the Union, if the Union enters into an agreement which contains terms more favorable than those prevailing at the time of the merger, the Association shall have the right to demand that such more favorable terms be deemed to be part of this agreement.
>
> Notwithstanding the foregoing, the Association shall not be entitled to demand more favorable terms if the Union demonstrates affirmatively that: (1) such more favorable term(s) was (were) granted in exchange for concessions or benefits (other than a wage increase) of equal or greater economic benefit to the Union; (2) the more favorable term(s) was (were) granted solely because the prior less favorable terms were not in practice observed or in effect in the shop.
>
> (b) Any dispute arising under this provision shall be submitted to arbitration in accordance with the arbitration provisions of this Agreement.
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> (c) On request of the Association, the Union shall exhibit to a designated representative of the Association any collective bargaining agreements between the Union and any Employer or Employers.

Joseph Cashman, the only witness to testify, is and owner and president of Litho Arts, one of the employer-members of the MLA. He testified that the Association's function is to act as counsel and negotiator in disputes with the Union and negotiate contracts for its members. He further testified that the purpose of the "Better Contracts" provision of the Agreement is to ensure that they will receive the best contract, in terms of manning presses, vacations, and benefits that may be negotiated with the Union of all union shops. If there is an independent contract with more favorable terms, the Association can seek to implement such terms. An exception to this general rule exists where the Union enters into an initial agreement with a company which has never been a signatory to an agreement with the Union.

B. The Relationship of Barton Press and Barton Printing to the Instant Dispute

Barton Press, Inc. (Barton Press) was a member of the MLA for a number of years, but most recently has entered into independent labor agreements with the Union. According to Cashman, the terms of these agreements mirror those contained in the MLA Agreement. Barton Press is owned by an established non-Association lithographer, EarthColor. EarthColor is also the parent corporation of other non-Association lithographers;

[2] It is admitted, and I find, that this is a unit appropriate for the purposes of collective bargaining.

notably, Barton Printing, Inc. (Barton Printing).[3] Both Barton Printing and Barton Press are competitors to the constituent members of the MLA.

In the latter part of 2005, members of the MLA had cause to believe that the Union had negotiated a new contract with an entity related to EarthColor. Acting on this belief, on October 26, 2005, MLA Counsel Kenneth A. Margolis wrote to Thomas M. Kennedy, counsel for the Union, requesting copies of the collective-bargaining agreement entered into by the Union with "EarthColor and/or Barton Kashen and/or APT." On February 2, 2007, the Union sent the MLA a memorandum of agreement between the Union and Barton Printing which was signed on March 30, 2006, and is effective by its terms until June 30, 2011 (the MOA). This is the first such agreement between the parties. The MOA contains the following provisions relevant to the instant dispute:

> WHEREAS, the Employer has advised the Union that it is a separate independent employer that is operated independently from any other employer including Barton Press even though the Employer shares or will share in the near future a common owner with Barton Press;
>
> WHEREAS, the Union is relying on those representations to consent to terms of employment which, while in excess of the terms prevailing at the Employer at the time of the agreement are not the same as the terms of employment prevailing in the shops belonging to the Metropolitan Lithographers Association ("MLA");
>
> WHEREAS, the Employer has committed to maintaining a separate corporate entity for the Employer throughout the term of this Memorandum of Agreement ("Agreement") including, but not limited to, a separate payroll, separate equipment and an arms-length business relationship between the Employer and any affiliated companies that are members of the MLA so that any business between such affiliate companies is invoiced and accounted for as though with an unrelated entity; and,
>
> WHEREAS, the Employer has agreed that if, at any time, it is determined to have caused the Union to have breached its Better Contracts clause with the MLA, *the Employer will take such steps as are necessary* so that there is no violation of the MLA Better Contracts Clause. [Emphasis in original.]

According to Cashman, the MOA presently contains more favorable terms regarding wages, press manning, and holiday schedules which would arguably provide Barton Printing with a competitive advantage over members of the Association.[4] On cross-examination, Cashman was asked whether knowing the wages and hours and other terms and conditions of employment of competitors such as Barton Printing and Barton Press would assist his company in developing bids. Cashman's response was that in most cases, he would not know who he was bidding against, so the information would not necessarily provide him with a competitive advantage. A limited exception would exist in circumstances where a company is trying to obtain an account currently held by another known lithographer.

After reviewing the MOA, Cashman searched the EarthColor internet site and came to believe that Barton Press and Barton Printing may be related to each other and operating under EarthColor, in which case the above-noted exception to the Better Contracts clause might not be applicable. In such an instance, the MLA would be privileged to invoke the more favorable terms of the MOA.

C. The Association's Information Request

On February 13, Margolis wrote to Union Official Patrick LoPresti as follows:

> We have received your letter dated February 2, 2007 enclosing a copy of what purports to be a memorandum of agreement between Local One-L (the "Union") and an employer identified as "Barton Printing, Inc." Presumably this document was provided as a partial response to the repeated requests of the Metropolitan Lithographers Association ("MLA") pursuant to Article 40, Better Contracts, for the opportunity to review all collective bargaining agreements between Local One-L and EarthColor, Applied Printing Technologies, Barton Press, Inc., and their related companies. As you know, those requests were made on numerous occasions, dating back to October 2005, and the Union's non-compliance eventually necessitated the filing of an unfair labor practice charge by the MLA.
>
> The agreement between Barton Printing, Inc. and the Union is in many material aspects far more favorable to the employer that the agreement between the Union and the MLA. Simply by way of illustration, and without limitation, the Barton Printing, Inc. agreement contains provisions on wages, complements, vacations, holidays and benefits that are all significantly more favorable to the employer.
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> Accordingly, the MLA and each of its member companies reserve the right, in accordance with the terms of the Better Contracts provision, to adopt and implement some or all of those more favorable terms, and to do so as of March 30, 2006, the effective date of the Barton Printing Inc. agreement.
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> Without waiving the foregoing, and in order to evaluate further the parties' rights and obligations under the Better Contracts provision, the MLA is requesting the following information from the Union. If the Union is not in possession of any of the information sought, it should so represent in a written response to this request. In our view, the Union's longstanding failure to respond to the MLA's prior requests for information bespeaks an intention to deprive the MLA companies of their rights under the Better Contracts provision. Consequently the MLA cannot be placed in a position where there is additional delay on the

[3] It appears from the record that, at some unspecified point in time, EarthColor acquired a company known as Associated Printing Technologies, Inc. (APT), which then changed its name to Barton Printing, Inc.

[4] Except as otherwise provided in the MOA, the terms and conditions of the Agreement are applicable to Barton Printing. Effective July 1, 2009, the general wage increases as set forth in the Agreement would be applicable to the employees of Barton Printing, and as of July 1, 2011, the manning compliments then existing in the Agreement would be applicable to the Barton Printing presses.

part of the Union, and it must have a complete response to the following information requests within the next ten (10) days.

1. Does the Union contend that the MLA companies are not entitled under the Better Contracts provision to implement the more favorable terms contained in the Barton Printing, Inc. agreement?

2. If the response to question 1 is in the affirmative, state the contractual basis for the Union's contention.

3. Set forth each and every fact which supports the putative contractual basis identified in question 2 above.

4. State whether Barton Press, Inc., or any other entity affiliated in any manner with EarthColor, is party to a collective bargaining agreement with the Union and, if so, provide a copy thereof.

5. Describe in detail the measures, if any, undertaken by the Union to ascertain the accuracy of the representation that Barton Printing, Inc. that it is "a separate independent employer that is operated independently from any other employer including Barton Press."

6. Describe in detail the measures, if any, undertaken by the Union to ascertain whether Barton Printing, Inc. has complied with its commitment to maintain "a separate corporate integrity for the Employer throughout the term of [the Agreement] including, but not limited to a separate payroll, separate equipment, and an arms-length business relationship between [Barton Printing, Inc.] and any affiliate companies that are members of the MLA so that any business between such affiliate companies is invoiced and accounted for as though with an unrelated entity."

7. Describe the business of Barton Printing, Inc.

8. State the address(es) and telephone and fax number(s) of Barton Printing, Inc.

9. State whether Barton Printing, Inc. maintains a website and, if so, state the URL thereof.

10. Produce copies of any business cards, letterhead, promotional materials, advertisements, announcements and other documents bearing the name of Barton Printing, Inc.

11. Identify each and every past and present parent, subsidiary, division and other entities that are affiliated in any manner with Barton Printing, Inc. and state the nature of such affiliation.

12. Describe each and every press and any and all other lithographic production equipment operated by, or on the premises of, Barton Printing, Inc. as of the effective date of the collective bargaining agreement between Barton Printing, Inc. and the Union identify the number and classifications of employees assigned to each such press or other equipment.

13. Describe each and every press and any and all other lithographic production equipment operated by, or on the premises of Barton Printing Inc. at any time since the effective date of the collective bargaining agreement between Barton Printing, Inc. and the Union. Identify the number and classifications of employees assigned to each such press or other equipment. State whether any such equipment formerly was located on the premises of Barton Press, Inc. and/or any other affiliated entity.

14. Describe each and every press and any and all other lithographic production equipment operated by, or on the premises of, Barton Press, Inc. as of the effective date of the collective bargaining agreement between Barton Printing, Inc and the Union. Identify the number and classifications of employees assigned to each such press or other equipment. State whether such equipment formerly was located on the premises of Barton Press, Inc. and/or any other affiliated entity.

15. Describe each and every press and any and all other lithographic production equipment operated by, or on the premises of, Barton Press, Inc. at any time since the effective date of the collective bargaining agreement. Identify the number and classifications of employees assigned to each such press or other equipment. State whether such equipment formerly was located on the premises of Barton Printing, Inc. and/or any other affiliated entity.

16. State whether Barton Printing, Inc. and Barton Press, Inc. share any customers, equipment, salespersons, supervisors, managers or employees. If the Union is not in possession of this information, state whether the Union has requested this information from Barton Printing, Inc. or Barton Press, Inc. and the date(s) and outcome(s) of such requests. State whether any such equipment formerly was located on the premises of Barton Printing, Inc. and/or any other affiliated entity.

17. Describe the "standards [of press manning] at APT at the time of purchase by Barton Printing," as referred to in paragraph 4D of the Barton Printing Inc. agreement

18. Identify each and every representative of Local One-L (including counsel) who participated in the collective bargaining negotiations with Barton Printing, Inc.

19. Identify each and every representative of Barton Printing, Inc. (including counsel) who participated in the collective bargaining negotiations with the Union.

20. Produce copies of all correspondence, memoranda, proposals and other communications of any kind or nature between the Union and Barton Printing, Inc. since October 2005.

21. Produce copies of all correspondence, memoranda, proposals and other communications of any kind or nature between the Union and any person or entity employed by or affiliated in any manner with EarthColor or its subsidiaries or divisions, relating to or referring to the terms and conditions of employment of lithographic production employees or to be employed at 77 Moonachie Avenue, Moonachie, New Jersey.

22. Identify each and every person or entity which holds any ownership interest in Barton Printing, Inc., including the extent of such interest.

23. Identify each and every person or entity which holds any ownership interest in Barton Press, Inc., including the extent of such interest

24. Identify each and every officer of Barton Printing, Inc.

25. Identify each and every member of the Board of Directors of Barton Printing, Inc.

26. Identify each and every officer of Barton Press, Inc.

27. Identify each and every member of the Board of Directors of Barton Press, Inc.

28. Produce a list of the names, classifications, and date of hire of each bargaining unit employee at Barton Printing, Inc.

29. Produce a list of the names, classifications and date of hire of each bargaining unit employee at Barton Press, Inc.

30. Identify each working and non-working foreman employed at Barton Press, Inc.

31. Identify each working and non-working foreman employed at Barton Printing, Inc.

32. Identify any and all delegates, shop stewards or other officers or representatives of Local One-L employed at Barton Press, Inc.

33. Identify any and all delegates, shop stewards or other officers or representatives of Local One-L employed at Barton Printing, Inc.

After the above letter was sent, Cashman received information from a former employee who worked for Barton Printing that that the press rooms of Barton Printing and Barton Press were being operated from one building separated by a glass wall, that there was a common and interchanged work force, and that two companies shared a common sales force and common management.

D. The Union's Response to the Association's Request for Information

On March 9, Union Counsel Kennedy wrote to Margolis, enclosing a copy of the Barton Printing MOA. In this letter, he further stated:

> I have also reviewed the extensive interrogatories that you have presented to Local One-L. They go well beyond what the MLA contract requires and [the Union does] not believe that the union has an obligation to engage in far reaching and burdensome efforts to generate responses to these interrogatories. If there is a particular and relevant question that we can answer without engaging in a burdensome analysis, please let me know and we will review it.

Margolis did not reply to this letter. On May 21, Kennedy sent Margolis the Union's response to its information request. Each numbered paragraph of the Association's letter is responded to with a corresponding paragraph (with the exception of requests numbered one through three, which are grouped together for response). The Union prefaced each response with the following statement of position:

> The Union denies that it has any legal obligation to answer this question which is not a request for information under the National Labor Relations Act but rather an interrogatory under the Federal Rules of Procedure. It would be highly prejudicial to the conduct of labor relations generally to import into them the several procedures applicable to discovery under the Federal Rules and a disservice to the parties to even attempt to do so.[5]

The Union then offered the following responses to the Association's information request:

> 1–3.With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the first through third question by stating that Local One-L is dedicated to the proposition that the Metropolitan Lithographers Association is entitled to the benefits which it has negotiated under its contract with Local One-L. But with those rights come responsibilities and one of them is to restrict its attempt to apply the Better Contracts clauses to instances which are encompassed under that agreement.
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> 4. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the fourth question by stating: Yes.
>
> 5. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the fifth question by stating: The Union is not clear what is meant by "measures." The representations as to the separate corporate and business status of Barton Printing, Inc are set forth in the applicable collective bargaining agreement. To the extent the MLA or any of its members have competent information that those representations have been or are being breached, we would welcome such information.
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> 6. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the sixth question by stating: See answer to 5 above.
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> 7. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the seventh question by stating: Printing.
>
> 8. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the eighth question by stating: This information is known to the MLA and does not require repeating here.
>
> 9. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the ninth question by stating: Unknown.
>
> 10. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the tenth question by stating: Local One-L does not maintain copies of such materials.
>
> 11. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the eleventh question by stating: Unknown.
>
> 12. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twelfth

[5] The initial response to questions one through three contains somewhat different language, as follows:

> The Union denies that it has any legal obligation to answer this question which is not a request for information under the National Labor Relations Act but rather a contention interrogatory under the Federal Rules of Procedure. It would be highly prejudicial to the conduct of labor relations, generally, to import into them the several procedures applicable to discovery under the Federal Rules and a disservice to the parties to even attempt to do so.

question by stating: The answer to this question is still being assembled.

13. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the thirteenth question by stating: See the answer to question 12.

14. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the fourteenth question by stating: See the answer to question 12.

15. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the fifteenth question by stating: See the answer to question 12.

16. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the sixteenth question by stating: See the answer to question 5.

17. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the seventeenth question by stating: See the answer to question 12.

18. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the eighteenth question by stating: See the answer to question 12.

19.With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the nineteenth question by stating: Local One-L does not know the identity of each individuals who participated in any way in the negotiations that led up to the agreement with Local One-L. In many instances, employers have individuals unknown to the union that play roles in formulating or costing proposals.

20. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twentieth question by stating: Having produced the agreement itself, it is irrelevant what proposals led up to it and it would expose the bargaining strategies and process of Local One-L to produce this material in a manner that would be highly prejudicial to Local One-L in its upcoming negotiations with the MLA and its members.

21. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-first question by stating: See the answer to question 20.

22. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-second question by stating: Unknown.

23. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-third question by stating: Unknown.

24. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-fourth question by stating: Unknown

25. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-fifth question by stating: Unknown

26. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-sixth question by stating: Unknown.

27. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-seventh question by stating: Unknown.

28. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-eighth question by stating: This information is confidential and cannot be released without the consent of those employees.

29. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-ninth question by stating: This information is confidential and cannot be released without the consent of those employees.

30. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the twenty-second [sic] question by stating: This information is confidential and cannot be released without the consent of those employees.

31. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the thirty-first question by stating: This information is confidential and cannot be released without the consent of those employees.

32. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the thirty-second question by stating: This information is confidential and cannot be released without the consent of those employees.

33. With a full reservation of rights and without prejudice to the foregoing, Local One-L answers the thirty-third question by stating: This information is confidential and cannot be released without the consent of those employees.

E. The Association's Reply

On May 31, Margolis sent a reply to Kennedy's May 21 letter. After initially noting that the Union's letter came more than 3 months after the Association's initial February 13 request, Margolis asserted that, with the exception of paragraph 4 of the request, the Union's response was substantively inadequate. The letter then sets forth the Association's requests for further particulars, as set forth in pertinent part, below:

> With respects to paragraphs 1, 2 and 3, you fail to answer the question whether Local One-L accepts that the MLA companies are entitled under the Better Contracts provision of their agreement with Local One-L to implement the more favorable terms of Local One-L's March 30, 2006 agreement with Barton Printing, Inc. Please answer specifically whether the MLA members are or are not entitled to implement the terms of the Barton Printing, Inc. agreement. If Local One-L denies that the MLA member companies are entitled to implement the more favorable terms of the Barton Printing agreement, then please explain the factual and contractual bases for this conclusion.
>
> With respect to paragraphs 5 and 6, your answers imply that Local One-L made no inquiries and took no other measures to determine the validity of the representations made by Barton Printing, Inc. regarding its corporate and business relationship with Barton Press, Inc. as set forth in Local One-L's March 30, 2006 memorandum of agreement with Barton Printing, Inc. That is how the MLA un-

derstands your answers. Please confirm whether that understanding is correct; and if it is not, please explain the inquiries made or other measures taken by Local One-L to determine the validity of the representations made by Barton Printing, Inc. (To clarify what is meant by "measures," we use that word in the sense of were any inquiries made, documents examined or any other steps taken by Local One-L to learn whether the representations being made to it were true.)

With respect to paragraph 7, you answered that the company is engaged in the business of "printing"; please specify whether Barton Printing, Inc. is engaged in the lithographic printing trade.

With respect to paragraph 8, you assert that the requested information is known to the MLA and need not be repeated. To the contrary, the MLA is entitled to have the information from Local One-L for purposes of collective bargaining even if the information might be obtained elsewhere. Please provide the requested information, forthwith.

With respect to paragraphs 9, 10, 11 and 22 through 27, you answered that the information is unknown to Local One-L. It is implausible in the extreme that Local One-L does not possess any of the requested information and materials. Assuming that Local One-L is innocent of such knowledge, we request that the information be provided immediately upon Local One-L learning any of what has been requested.

With respect to paragraphs 12, 13, 14, 15, 17 and 18, you state that the requested information "is still being assembled." We again note that your letter was sent more than three months after the information was requested. Your prolonged delay in "assembling" the information manifests a bad faith refusal to provide the requested information. Without conceding that Local One-L has not yet made a good faith effort to comply with its obligations to provide the requested information, the MLA requests that Local One-L immediately forward to us whatever part of that information has so far been assembled in response to the MLA's requests 12, 13, 14, 15, 17 and 18. The balance of the information must be provided at the earliest possible date that it is assembled, and please give us the date that Local One-L expects to have this information assembled and provided to the MLA.

With respect to paragraph 16, you reply by referring to your answer to question 5. We understand that answer to mean that Local One-L has made no inquiries of either Barton Press, Inc or Barton Printing, Inc. respecting the requested information. If this understanding is not correct, please explain the inquiries made or other measures taken by Local One-L to obtain this information and forward any available information to us forthwith.

With respect to paragraph 19, you reply that Local One-L, "does not know the identity of each individual who participated *in any way* in the negotiations that lead [sic] up to the agreement with Local One-L. In many instances, employers have individuals unknown to the union that play roles in formulating or costing proposals…." [Emphasis supplied in the original]. Your answer is evasive. The MLA did not request the identity of persons unknown to Local One-L; we requested the identities of those "who participated in the collective bargaining negotiations with the Union." This plainly included those from Barton Printing, Inc. who met with or otherwise communicated with Local One-L, including counsel, in furtherance of any collective bargaining between those parties. For example, Local One-L presumably knows the identity of the two individuals who signed the March 30, 2006 memorandum of agreement on behalf of Barton Printing, Inc. One of the two also signed the Barton Press memorandum of agreement with Local One-L on January 27, 2006 as "President" of Barton Press, Inc. It would seem that this individual is well known to Local One-L's agents. Please provide us forthwith with the names and positions of all those known to Local One-L who have participated with it in collective bargaining on behalf of Barton Printing, Inc.

With respect to paragraphs 20 and 21, you claim that the requested materials are subject to a privilege under the National Labor Relations Act for "negotiating strategies and process," but you provide no authority for this proposition and we are aware of none. If you are aware of such legal authority, please city it forthwith. In the absence of such authority, please forward the requested information and materials to us immediately.

With respect to paragraphs 28 through 33, you assert that the requested information "is confidential and cannot be released with the consent of those employees" about whom information was requested. You have provided no legal authority to support your assertion that this information is privileged from disclosure under the Act and we are aware of none. If you are aware of such legal authority, please cite it forthwith. In the absence of such legal authority, please provide us with the requested information immediately. Additionally, if there are legitimate grounds to consider any of the requested information in these paragraphs to be confidential, the MLA is willing to consider any appropriate protection for personal privacy and other legitimate confidentiality concerns. Please let us know what confidentiality protections Local One-L proposes and we will respond as may be needed.

The letter concludes with the following statement:

> Local One-L's dilatory response to our requests for information is unfairly delaying the MLS's consideration of whether to pursue implementation or a contractual grievance relating to the Better Contracts provision of the MLA's agreement with Local One-L. Therefore, the MLA requests that all the requested information not already provided by forwarded immediately.

Under cross-examination, Cashman acknowledged that the MLA has not filed a grievance regarding the Union's response to its request for information or the implementation of the Better Contracts provision of the Agreement; nor have the MLA members discussed doing so.

The Union did not respond to the Association's May 31 letter and other than what is contained in its letter of May 21, as

described above, has provided no further information to the Association.

F. Positions of the Parties

The General Counsel contends that the Union has unlawfully failed to provide information which is necessary for, and relevant to, the enforcement of its Agreement with the Association. Specifically, for reasons discussed in further detail below, counsel for the General Counsel asserts that the Union has unlawfully failed to provide information pursuant to paragraphs 1–3, 5, 6, 8, 12–21, and 28–33 of the Association's information request.[6] The General Counsel maintains that the relevance of the requested documents would have been apparent to the Union because of the Association's disclosure of the reasons for and the purpose of the requested documents in its February 13 request. When the Union finally did respond, some 3 months later, it stated that the Union did not know some of the requested information, and those paragraphs are not at issue herein. For the balance of the Union's response, it essentially issued the same answer to each question, objecting to the nature of the request itself.[7]

As outlined in its posthearing brief, Respondent argues that it complied with the Association's information request. In support of this position, Respondent takes issue with the reliance of the General Counsel on the premise that the obligations of an employer and a union with respect to the production of information are parallel. Citing no authority to support such a contention, Respondent argues that such reliance is misplaced where the employees of a different employer are involved.[8] Respondent acknowledges that the collective-bargaining agreements a union has with other employers are presumptively relevant to administer a "most-favored nations" clause. Respondent contends, however, that the information sought by the Association is not presumptively relevant, and pursuant to the terms of the Agreement, it is required only to provide the Association with the labor agreements it has with other employers. Respondent argues that its obligation to provide information under the Act is similarly constrained. In support of this contention, Respondent relies on *Chicago Typographical Union 16 (Chicago Sun-Times)*, 296 NLRB 180 (1989), for the proposition that where the right to obtain information rests on a most-favored nations clause, it is the labor agreement itself which defines the scope of the obligation to produce, so the labor agreement itself must be construed to determine both the existence of the obligation and its extent. As Respondent asserts, "[h]ere, the collective bargaining agreement mimics Board law and restricts the obligation to provide relevant information to produce only the collective bargaining agreements." Respondent argues that, insofar as the Union complied with its obligations under the Agreement and provided the Barton Printing MOA to the Association, neither the Agreement nor Board law requires anything further.

Respondent further asserts that an inspection of the "interrogatories" contained in the MLA's February 13 letter shows that they are contentious, argumentative and irrelevant. In particular, Respondent argues that there was no showing that the information sought is needed to police the Association's labor agreement or how it may relate to bargainable issues. Respondent additionally contends that, under the circumstances, the Better Contracts provision is not triggered insofar as the Barton Printing labor agreement contains terms that are identical to the terms found in the Association agreement or will soon become so. In the alternative, Respondent argues that insofar as Barton Printing is a new company, and its predecessor, APT was a nonunion company, the Barton Printing labor agreement falls squarely within the exception to the Better Contracts clause. Finally, Respondent argues that that the Association's information requests seek information which would be of commercial advantage to it and contends that it is unenforceable inasmuch as it may violate the Sherman Act.

In its answer to the complaint, Respondent has additionally raised a number of affirmative defenses, which are discussed in detail below.[9]

III. DISCUSSION

A. Applicable Legal Standards

A labor organization's statutory duty to furnish information pursuant to Section 8(b)(3) of the Act is "commensurate with and parallel to an employer's obligation to furnish it to a union pursuant to Section 8(a)(1) and (5) of the Act." *Teamsters Local 500 (Acme Markets)*, 340 NLRB 251, 252 (2003); *Iron Workers Local 207 (Steel Erecting Contractors)*, 319 NLRB 87, 90 (1995); see also *Fireman & Oilers Local 288 (Diversy Wyandotte)*, 302 NLRB 1008, 1009 (1991). The duty to provide information applies to information relevant to the policing or administration of a collective-bargaining agreement, including determinations of whether to file a grievance, and whether to

[6] According to attachment A to the complaint, the General Counsel has deemed that the Union has sufficiently answered pars. 7, 9–11, and 22–27 of the Association's request for information.

[7] The Charging Party appears to argue that all the information sought is presumptively relevant; however, this is not the theory advanced by the General Counsel. It is well-settled that it is the General Counsel that controls the theory of the case and the administrative law judge cannot consider theories for violations argued by the charging party that substantially differ from the General Counsel's. *Zurn/N.E.P.C.O.*, 329 NLRB 484 (1999). In any event, as discussed in further detail below, in cases involving a suspected joint or single-employer or alter ego relationship, the relevance of such information must be shown. See, e.g., *Proctor Mechanical Corp*., 279 NLRB 201, 204 (1986); *Bohemia, Inc*., 272 NLRB 1128, 1129 (1984).

[8] In a related argument, Respondent asserts that where, as here, the request for information is about employees outside the bargaining unit, there must be a showing that the requested information is relevant to "bargainable issues" and that, here, no such showing has been made.

[9] In sum, these affirmative defenses are that the allegations of the complaint are time barred by Sec. 10(b) of the Act; that the unfair labor practice charge is pre-empted by the collective-bargaining agreement providing that all disputes rising under the Better Contracts provision be submitted to arbitration; that certain requests are contention-type interrogatories that are disfavored under the Federal Rules of Civil Procedure; that certain requests demand that the Union identify information which is irrelevant to the collective-bargaining process; and that certain paragraphs of the demand for information seeks material that is confidential. Respondent has additionally argued that the information requests are burdensome and Respondent has refused to cooperate in reducing its demand to a more intelligible form.

proceed to arbitration. *Washington Beef, Inc.*, 328 NLRB 612, 617–618 (1999); *Bacardi Corp.*, 296 NLRB 1220, 1222–1223 (1989), *Chesapeake & Potomac Telephone Co*., 259 NLRB 225, 227 fn. 7 (1981), enfd. 687 F.2d 633 (2d Cir. 1982). Relevance is assessed by using a liberal "discovery-type standard." *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967).

Information pertaining to the terms and conditions of employment of the bargaining unit is presumptively relevant, and must be provided on request, without need on the part of the requesting party to establish specific relevance or particular necessity. *Iron Workers Local 207 (Steel Erecting Contractors),* above at 91 (and cases cited at fn. 8). However, requests for information concerning matters outside of the bargaining unit require a demonstration of relevance. *Shoppers Food Warehouse Corp*., 315 NLRB 258, 259 (1994); *Ohio Power Co*., 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976).

A party has satisfied such a burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. In determining the relevancy of the requested information, the burden is not an exceptionally heavy one, requiring only that the desired information is relevant and that it would be of use to the party in carrying out its statutory duties and responsibilities. *Certco Distribution Centers*, 346 NLRB 1214, 1215 (2006); *Shoppers Food Warehouse*, supra at 259.

Generally, the Board has recognized that an employer is reasonably entitled to monitor a union's compliance with its collective-bargaining agreement and, in this regard, has further held that the existence of a "most-favored nations" clause establishes both the necessity and relevance of information regarding the agreements that a union has with other employers, to insure that nonassociation members are not obtaining a competitive advantage. A union's refusal to furnish such information violates Section 8(b)(3) of the Act. *Electrical Workers Local 292 (Sound Employers Assn.),* 317 NLRB 275, 275–276 (1995), citing *Teamsters Local 272 (Metropolitan Garage)*, 308 NLRB 1132, 1133–1134 (1992); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1002 (1990).

When requests for information are made regarding suspected alter ego, joint or single-employer relationships and involve information regarding the wages and terms and conditions of employment of employees who are outside the contractually defined bargaining unit, the requesting party bears the burden of establishing the relevance of the information. *Reiss Viking*, 312 NLRB 622, 625 (1993); *Pulaski Construction*, 345 NLRB 931 (2005); *Dodger Theatricals Holdings*, 347 NLRB 953, 966 (2006).

B. Application to the Instant Case

In applying these principles to the instant case, the first issue to be determined is whether the General Counsel has shown that Association had a sufficiently reasonable belief based on objective facts that the relationship between Barton Printing and Barton Press might privilege it to invoke the "Better Contracts" clause of the Agreement. Generally, in evaluating whether such a burden has been met, the Board does not pass on the merits of a contractual claim. *Dodger Theatricals*, supra at 15; *Certco Distribution Center*, supra at 2; *Shoppers Warehouse*, supra at 259. Accordingly, I need not decide whether the MLA is, in fact, entitled to invoke the remedial provisions of the Better Contracts clause in evaluating whether it had a reasonable basis for its information request.

As noted above, the Better Contracts clause has an exception for employers that have not previously had a collective-bargaining agreement with the Union. Thus, the relationship of Barton Printing, an allegedly new employer, to Barton Press, a company which is already a signatory to an agreement with the Union, becomes central to a determination of whether the MLA members are entitled to the benefit of Barton Printing's more favorable contract terms. In this case, I find as an initial matter that, notwithstanding Barton Printing's stated commitment to maintaining a separate corporate identity, the MOA in and of itself gives rise to a number of objective factors which would tend to support a reasonable belief that there is a possible single or joint employer or alter ego relationship between the two companies: the similarity of company names, the contractual assertion that Barton Printing "shares or will share in the near future a common owner with Barton Press," as well as the fact the that the two companies apparently are in the same industry.

Here, the Association additionally ascertained that that the Barton Printing MOA contained terms that were more favorable to that company, possibly providing it with a competitive advantage. The MLA then undertook an examination of the EarthColor internet site, and came to believe that both Barton Printing and Barton Press were operating under EarthColor. To the extent that the information relied on by the Association was derived from what was characterized by Respondent as "hearsay" sources, the Board has made clear that such evidence can be considered in establishing "reasonable belief." See *Dodger Theatricals,* supra at 967; *Contract Flooring Systems*, 344 NLRB 925, 928 (2005); *Cannelton Industries*, 339 NLRB 996, 1005 (2003).[10]

Thus, I find that the Association had a reasonable basis for believing that it might be entitled to implement the more favorable terms in the Barton Printing contract in the event that company was sufficiently related to Barton Press to make the exception to the Better Contracts clause inoperable. This assumption was later further confirmed by anecdotal evidence from one employee that the Barton Printing and Barton Press operations had substantial interchange in terms of equipment, employee complement and management. While this level of investigation may not have been extensive it was, in my opinion, sufficient to form a basis for the Association's reasonable belief that there might exist a single or joint employer or alter ego relationship between the two companies.

The General Counsel argues that the purpose of the Association's information request would have been apparent to the

[10] In fact, several cases make clear that it is not necessary that the factors relied on be shown to be accurate or even ultimately reliable. See, e.g., *Public Service Electric & Gas Co*., 323 NLRB 1182 (1997); *Electrical Energy Services*, 288 NLRB 925, 931–932 (1988). Further, although Respondent objected to the admission of this evidence as hearsay, technically speaking it was neither offered not accepted for the truth of the matter asserted, but only in connection with the Association's reasonable belief based on the information that it received.

Respondent, and I agree. In this regard, the MLA specifically stated that the purpose of the information request was to enable it to evaluate the parties' rights and obligations under the Better Contracts clause. Additionally, the totality of the circumstances surrounding the request, coupled with the other contentions made in the Association's February 13 and May 31 letters were sufficient to place the Union on notice of a relevant purpose for the information.[11] The sufficiency of the request should not be judged from the request itself, but in light of the entire pattern of facts available to the party. See *Ohio Power Co*., 216 NLRB 987, 990 fn. 9 (1975).[12]

C. The Scope of Respondent's Obligation to Respond to the Information Requests

I reject Respondent's contention that it satisfied its obligation to provide information to the Association by providing it with the Barton Printing MOA. As Board law makes clear, a party's obligation to provide relevant information is not limited to that which is deemed presumptively relevant. Information that is not presumptively relevant may, in fact, have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 84 (2d Cir. 1969). Respondent's reliance on *Chicago Typographical Union 16 (Chicago Sun-Times)* supra, is misplaced. In that case, the Board found that the existence of a most-favored nations clause "creates a duty on the part of the [respondent union] to disclose information concerning wages, hours, and other terms and conditions of employment at the [requesting party's] principal competitor." The Board did not find, however, that a respondent's obligation was specifically limited to such information. More importantly, the situation considered by the Board therein did not concern itself with an alleged single or joint employer or alter ego relationship, as is the case here.

I additionally reject Respondent's contention that the Agreement defines and limits the scope of its obligation to provide information under the Act to providing collective-bargaining agreements it has entered into with other employers. The duty to furnish information is a statutory obligation which exists independent of any agreement between the parties. *American Standard*, 203 NLRB 1132 (1973). The Board and the courts have held that a contract provision entitling a party to certain specific information will not be found to constitute a waiver of that party's right to receive other relevant information, unless such a waiver is expressly stated in the agreement. *Mt. Sinai Hospital*, 331 NLRB 895, 911 (2000); *Bozzuto's, Inc*., 275 NLRB 353, 358 (1985); *Standard Oil v. NLRB*, 399 F.2d 639, 642 (9th Cir. 1968). See generally *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983) (waiver of statutory rights evaluated under "clear and unmistakable" standard).

Accordingly, I conclude that Respondent's argument that it was not required to provide the Association with material other than the Barton Printing MOA is without merit. Neither Board law nor the express terms of the Agreement privilege Respondent to take such a position. [13]

As noted above, I do not pass on the merits of any claim that Barton Printing and Barton Press are single or joint employers or have an alter ego relationship, or whether the Association would be entitled to avail itself of a remedy under the Better Contracts clause. I do find, however, that the Association is entitled, under the liberal discovery-type standard that applies here, to the information which the Association has shown is relevant to the enforcement of its collective-bargaining agreement with the Union, and, more particularly, whether it is entitled to seek the remedies provided for in the Better Contracts clause. Thus, I find that the information sought by paragraphs enumerated 8, 12–16, 18–21, and 28–33 is all relevant to evaluating whether Barton Printing or Barton Press share equipment, customers, salespersons, supervisors, managers, employees, owners, collective-bargaining agents, delegates, or shop stewards. This is precisely the sort of information that has been ordered to be produced by the Board in connection with claims of suspected joint or single-employer or alter ego status. *Pulaski Construction Co*., supra at 939–942; *Contract Flooring Systems*, supra at 930–933; *Gary's Electrical Service Co*., 326 NLRB 1136, 1143–1145 (1998).

Further, section 4D of the MOA references an agreement between APT and the Union without providing the actual contractual terms. Paragraph 17 is a request for the clarification of the terms and conditions of employment agreed to in section 4D of the MOA. This is, therefore, information that the Union has conceded that it is required to provide.

I additionally find, however, that the General Counsel has painted with too broad a brush in contending that Respondent was obliged to provide information as it relates to certain paragraphs of the MLA's information request. In particular, I find that the General Counsel has failed to prove that the MLA has demonstrated the relevancy of paragraphs 1, 2, 3, 5, and 6 of its information request.

Respondent raises a specific affirmative defense with regard to paragraphs 1, 2, and 3 in its February 13 letter, asserting that they require the Union to "characterize which facts are supportive of the Union's contentions" and that "[s]uch contention type interrogatories are disfavored under the Federal Rules of Civil Procedure and have no place in labor relations." Both the General Counsel and the Association, relying primarily on *Ormet Aluminum Mill Products*, 335 NLRB 788 (2001), argue that

[11] In this regard, I note that Respondent has not asserted that it the Association did not articulate the reason behind the information request.

[12] In any event, the purpose of the information request was made clear to the Union at the hearing. See *Pulaski Construction Co*., supra at 932.

[13] As an evidentiary matter, I reject Respondent's argument that the Better Contracts provision of the Agreement was not triggered insofar as the Barton Printing MOA contained terms that were identical to the Agreement or would soon become so. As for Respondent's additional contention that the Barton Printing MOA falls squarely within the exception to the Better Contracts clause, such an argument goes to the merits of any such claim by the Association, not to whether there is a reasonable objective basis for its information request. As discussed above, whether or not the Association would ultimately prevail in this regard is not relevant to the inquiry herein.

the Board has held that valid requests for information may be posed in interrogatory form.

The mere fact that a party asks questions that require a narrative response does not, in and of itself, diminish the potential relevance of the requested information. The Board and the courts have ordered parties to answer narrative questions in a number of cases.[14]

In my view, however, there is a distinction between the type and manner of interrogatory questions at issue in the authority cited by the General Counsel and the Association and those set forth in paragraphs 1, 2, and 3 of the February 13 letter. Merely labeling such questions as "interrogatories" which are permitted by the Board elevates form over substance in this instance.

The relevant paragraphs demand that the Union provide the Association with its "contentions" about whether the MLA is not entitled to implement the more favorable terms of the Barton Printing Agreement, to identify the contractual basis for such contentions and set forth each and every fact which supports such a contractual basis. These questions, taken as a whole, do not ask for information: they demand theories of contractual interpretation, or possibly seek to require Respondent to articulate the legal theories and defenses which might be presented to an arbitrator should the Association seek to invoke its rights under the Better Contracts clause or in the event a grievance were to be filed with regard thereto.[15]

In my view, the General Counsel has failed to establish that the Respondent has a statutory duty to respond to inquiries of this sort. The authority relied on by the General Counsel and the Association does not compel such a result. For example, in *Ormet*, supra, the employer was asked to identify specific facts regarding equipment, skills and manpower to support its decision to subcontract work. Similarly, in *Genovese & Didonno, Inc*., 322 NLRB 598, 598 fn. 4 (1996), cited by the Association, the information request at issue concerned the employer's operation of a nonunion company. It consisted of 79 two-part questions: the first asked about an aspect of the respondent's business, and the second part asked the identical question about the suspected nonunion company operated by the respondent. To the extent the nature of the information request is explicated by the administrative law judge, it appears that the respondent therein was asked to produce specific factual information within its control.[16]

The Union has a statutory duty to provide the Association with information within its possession which relates to the enforcement of the Agreement. Neither the General Counsel nor the Association have pointed to any authority which holds that a party has a corresponding duty to provide a statement of position, explicate its legal theories or to create them upon demand. Moreover, the General Counsel has advanced no argument as to how discerning the "contentions" of the Union with regard to whether the MLA is entitled to invoke the Better Contracts clause would be of any relevance to or assist the MLA in enforcing its rights under the Agreement. Nor, in my view, would one be apparent to the Respondent. Clearly, the MLA could seek to invoke its rights under the Better Contracts clause irrespective of any "contentions" held by the Union about its right to do so. Thus, one could argue that such contentions are irrelevant. Accordingly, I find that the Union did not violate the Act by failing and refusing to further respond to paragraphs 1–3 of the Association's February 13 letter.

I further find that the General Counsel has failed to demonstrate the relevancy of paragraphs 5 and 6 of the Association's information request. These inquiries require the Union to "describe the measures if any taken by the Union" to ascertain the accuracy of the representations in the MOA that Barton Printing is a "separate independent employer," that it is operated independently from Barton Press, and similarly to "describe the measures" undertaken by the Union to determine whether Barton Printing has complied with its commitment to maintain "a separate corporate integrity."

In *Iron Workers Local 207 (Steel Erecting Contractors),* 319 NLRB 87, 91 (1995), relied on, for differing reasons, by all parties herein, the Board found that the union had violated Section 8(b)(3) by failing and refusing to provide certain information as requested by the employer. In so doing, the Board noted that: "[R]equests for information relating to persons outside the bargaining unit require a special demonstration of relevance." The Board went on to find that:

> Insofar as the information request pertains to employees outside the bargaining unit (i.e., employees of non-Association employers who are nevertheless signatory to or bound by the collective-bargaining agreement), we find that the specific provisions of the collective-bargaining agreement establish the relevance of the Association's inquiry. Under article 1, the Respondent is obligated to insist on the enforcement of contractual terms with respect to non-Association employers. . . . The Association is reasonably entitled to monitor the Respondent's compliance with the above obligations so that the Association may attempt to ensure that non-Association employer and contractors are not obtaining a competitive advantage by paying apprentices less than contractual wage rates or benefit amounts.

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[14] In addition to the cases cited above see also *Cornerstone Masonry Constructors,* 343 NLRB 971 (2004) (alter ego case; 77 questions, which required the respondent to describe the alleged alter ego businesses, their personnel and administrative characteristics and their respective geographic locations); *Gary's Electrical Service Co*., supra at 1143–1145 (same); *Proctor Mechanical Corp*, supra at 203 (27 questions regarding a possible "double-breasted" operation).

[15] I note that par. 3 asks for "specific facts" which might be supportive of the Union's contention that the MLA is not entitled to invoke the Better Contracts provision. I find, however, that this request is inextricably linked to pars. 1 and 2, which I deem to be improper. I additionally find that the other enforceable requests in the February 13 letter, which is comprehensive in its scope, would provide the Association with the information it seeks in this regard.

[16] *A&M Trucking, Inc*., 314 NLRB 991, 993 fn. 8 (1994), also cited by the Association, is inapposite. The respondent therein did not dispute that the requested information was relevant and necessary to the performance of the union's representational duties. The issue presented to the Board in that instance was whether the contract at issue was a members-only contract.

Thus, while the terms of a collective-bargaining agreement cannot, absent a clear and unmistakable statement of intent, be construed as a waiver of a party's statutory right to information, the scope and nature of the information to which a party is entitled is framed by the parties' contractual undertakings. See also *Chicago Typographical Union 16*, supra at 186. Here, the Better Contracts clause contains a provision regarding the circumstances under which the MLA may implement more favorable contract terms. Thus, the Agreement contemplates that the Association would have access to such information as would enable it to determine whether or not it is entitled to that contractual remedy.

In its brief, General Counsel argues that paragraphs 5 and 6 are "relevant in determining whether the Union is in possession of any evidence that Barton Printing is unrelated to Barton Press, and whether the Union has received any evidence since that contract was signed with Barton Printing that this relationship remains the same."[17] In my view, this misapprehends the nature of the information sought by these paragraphs. Indeed, had the Association asked such questions as they have been described by the General Counsel, such inquiries might well be found to be relevant. However, paragraphs 5 and 6 do not ask for evidence within the Union's possession regarding the relationship between Bargon Printing and Barton Press, rather they require the Union to describe "measures" it has taken to ascertain the accuracy and veracity of certain representations made by Barton Printing as set forth in the MOA.[18] I find that the General Counsel has failed to show how information regarding certain actions taken (or not taken) by the Union is relevant to contract administration or enforcement.

To the contrary, paragraphs 5 and 6 go beyond what is required to administer and enforce the Agreement between the Union and the Association as it is written. In particular, there is no affirmative contractual obligation upon the Union to take measures to monitor compliance as regards its collective-bargaining agreements with other employers, or to disclose such compliance or noncompliance to the Association. By contrast, in *Iron Workers Local 207*, supra, the respondent union had a delineated contractual obligation to insist on the enforcement of contractual terms with respect to nonassociation employers. Thus, as the Board found, the respondent had an obligation to provide information which would enable the employer association therein to monitor compliance with that specific contractual commitment. See also *Electrical Workers Local 292 (Sound Employers Assn.)*, 317 NLRB 275, 276 fn. 2 (1995), where the respondent union had a contractual obligation "immediately notify" the multiemployer association of better terms granted in the relevant industry.

Moreover, the General Counsel has failed to demonstrate how information regarding "measures . . . undertaken by the Union" with respect to investigating the relationship between Barton Printing and Barton Press would assist the Association in enforcing the Better Contracts clause. Further, neither the General Counsel, nor the Association, has pointed to the existence of a contractual remedy available to the Association for any purported Union failure to take such measures. Accordingly, I find that the General Counsel has not shown that the information sought by paragraphs 5 and 6 is relevant and necessary to contract administration, and I therefore conclude that Respondent did not violate the Act by failing and refusing to answer these inquiries.

D. Respondent's Affirmative Defenses

Respondent has also posed certain affirmative defenses to the allegations of the complaint. It is well established that the burden of proof of establishing an affirmative defense lies with the party advancing it. *Marydale Products Co*., 133 NLRB 1232 (1961); *Sage Development Co*., 301 NLRB 1173, 1189 (1991). In sum, I find that Respondent has failed to meet its burden of proof with respect to its affirmative defenses, as discussed below.

1. The 10(b) statute of limitations

Respondent first asserts that the allegations of the charge are time barred by Section 10(b) of the Act because the Association's "requests for information began in 2005." Respondent did not specifically adduce any evidence in support of this claim at the hearing and, further, did not address this issue in its brief. Nevertheless, this affirmative defense has not been withdrawn, and inasmuch as it was incorporated in Respondent's answer, has been timely raised. *DTR Industries*, 311 NLRB 833, 833 fn. 1 (1993), enfd. denied 39 F.3d 106 (6th Cir. 1991) (Sec. 10(b) defense waived when not pleaded as an affirmative defense in the answer or litigated at the trial.). Accordingly, I will address Respondent's contentions in this regard.[19]

The instant charge, filed on February 5 and served on February 8, alleges that the Union violated Section 8(b)(3) of the Act because it had: "failed and refused to provide the [MLA] with requested information about other employers having collective-bargaining agreements with Local One." While the parties appear to be in agreement that the 2005 request referred to by Respondent in its affirmative defense was the request for a copy of the "Earth Color/Barton Kashen/APT Agreement"; that precise issue was not litigated in the context of this case. In any event, the Association's request for collective-bargaining agreements was apparently not satisfied until February 2, 2007. Respondent's reply to this initial demand is, however, not the subject of the instant complaint. Rather, the alleged unlawful conduct concerns itself exclusively with the Union's response to the Association's February 13 letter. Thus, in this case, the

[17] Similarly, in its brief, the Association contends that these requests seek information that the Union learned in determining that the two companies are separate employers.

[18] In its May 31 letter, the Association specified that, by the term "measures" it was seeking information regarding "inquiries made, documents examined or any other steps taken by Local One-L to learn whether the representations being made to it were true."

[19] Counsel for the General Counsel did not address this issue either at the hearing or in its brief. The Association, citing *Nickles Bakery of Indiana*, 296 NLRB 927, 928 (1989), argues that the allegations of the charge are not time barred inasmuch as the issues under consideration postdate the charge, and that the complaint amends the charge to the extent necessary so long as the new matters alleged are closely related to the scope of the charge.

Union's alleged refusal to provide the requested information came after the filing and service of instant charge.

Initially, it is noted that a charge is not a pleading and does not require the specificity of a pleading. It merely serves to initiate a Board investigation to determine whether a complaint should issue. *NLRB v. Fant Milling Co*., 360 U.S. 301, 307 (1959). The complaint is not restricted to the precise allegation of the charge. So long as there is a timely charge, the complaint may allege any matter closely related to, or growing out of, the controversy which produced the charge, or which relates back to or defines the charge more precisely. *Fant Milling Co*., supra at 307, 309; *National Licorice Co. v. NLRB*, 309 U.S. 350, 369 (1940).

In addition, I note that the Board has allowed the General Counsel to pursue charges based on activity that occurred within the 10(b) period, where such activity stemmed from conduct that occurred more than 6 months before the charge was filed. In *Iron Workers Local 433 (Steel Fabricators Assoc.)*, 341 NLRB 523 (2004), the respondent union first informed the charging party in August 1999, more than 6 months before he filed his charge, that any dues payments he made would be applied to his outstanding fine balance. While a violation based on that statement would have been time-barred, the union engaged in other unlawful conduct (i.e., reiterating that it would apply any dues payments to the charging party's fine balance and threatening to suspend him and refusing to allow him to work if he did not pay his dues) within the 10(b) period. Applying this analysis to the instant case, the Union's refusal to provide information in response to the Association's February 13 request may properly be the subject of a complaint notwithstanding any relationship it may have to other conduct occurring in 2005, a period which is apparently outside the limitations period. The instant case, however, differs from the circumstances in *Iron Workers Local 433*, supra, in that the operative events giving rise to the instant complaint did not occur until after the charge was filed.

In various other contexts, the Board has held that events that postdate a charge may be included in a complaint where they are violations of a kind that are "closely related" to those alleged in a prior timely charge. For example, in *Redd-I, Inc*., 290 NLRB 1115, 1115–1116 (1988), the Board dealt with allegations in a complaint amendment that were not described in the underlying charge. In applying the "closely related" test set forth in *Redd-I*, supra, the Board looks at: (1) whether the new allegation involves the same legal theory; (2) whether the new allegation arises from the same factual circumstances of sequence of events; and (3) whether the respondent would raise the same or similar defenses to both allegations. See also *Nickles Bakery of Indiana*, supra at 927–928 (applying similar relatedness tests to allegations in initial complaints). Here, the charge alleged that the Union violated Section 8(b)(3) of the Act because it had: "failed and refused to provide [the Association] with requested information about other employers having collective-bargaining agreements with Local One." Thus, the allegations of the charge and those set forth in the complaint are essentially one and the same. Respondent has cited no authority for the proposition that unlawful conduct occurring subsequent to the filing of a charge, which is closely related to the subject matter of that charge, cannot properly be the subject of a complaint.[20] Accordingly, I find that Respondent has failed to meet its burden of proof to establish that the allegations of the complaint are barred by Section 10(b) of the Act.

2. Deferral to the grievance-arbitration process

Respondent further contends that the instant dispute is preempted by the parties' collective-bargaining agreement and should be deferred to arbitration under the principles of *Collyer Insulated Wire*, 192 NLRB 837 (1971). While Respondent has recognized the Board's general policy of nondeferral to arbitration in information cases, it argues that under the specific facts of this case, deferral would be appropriate. In particular, Respondent cites to subparagraph (b) of the Better Contracts clause which provides that "[a]ny dispute arising under this provision shall be submitted to arbitration in accordance with the arbitration provisions of this agreement." In its brief, Respondent argues that this is a "de facto waiver" by the MLA of any opportunity to invoke anything other than the grievance and arbitration provisions of the Agreement if there is a dispute over the Better Contracts clause. Respondent further relies upon subparagraph (c) of that provision which provides that, "[o]n request of the Association the Union shall exhibit to its designated representative of the Association any collective bargaining agreements between the Union and any employer or employers." According to Respondent, that is the "sum and substance" of the affirmative obligation imposed upon the Union in connection with the better contracts clause—produce the contract or contracts at issue.

As an initial matter, I find that there is no "de facto waiver" of the MLA's right to seek information necessary and relevant to the enforcement of the Agreement or of its right to seek recourse before the Board with respect to such matters. As discussed above, it is well-settled that any such waiver of statutory rights must be in express terms, and must be in clear an unmistakable language. *Metropolitan Edison Co. v. NLRB*, 460 U.S. at 708; *United Technologies Corp*., 274 NLRB 504, 507 (1985). Here, Respondent can point to no such language. As noted above, Respondent relies on the fact that the Agreement mandates that it provide the Association with copies of collective-bargaining agreements with other employers. As has been discussed previously herein, the Board has held that a contract clause stating that a party is entitled to certain specific information is not a waiver of that party's right to receive other relevant information. *Mt. Sinai Hospital*, supra; *Bozzuto's, Inc*., supra. Accordingly, as Respondent's "de-facto waiver" argument has been rejected by the Board and the Supreme Court, I do not find any such waiver of the Association's statutory right to information here.

With regard to Respondent's deferral argument more generally, the Board has "a longstanding policy of nondeferral to arbitration in information request cases." *Shaw's Supermarkets,*

[20] In addition to allowing postcomplaint amendments to allege matters not described in the underlying charge, the Board has also allowed the General Counsel to add complaint allegations contained in a previously dismissed charge. See *Sonicraft, Inc. v. NLRB*, 905 F.2d 146, 148–149 (7th Cir.1990), cert. denied 498 U.S. 1024 (1991).

339 NLRB 871 (2003). I note that several recent Board members have indicated in dissenting or concurring opinions that they would consider deferral of information requests under certain circumstances; however, in reviewing the positions taken by members of the Board regarding this issue, I find inadequate support to presume that a Board majority would consider deferral to be appropriate in the instant case. In this regard, I note that neither the contractual grievance arbitration clause nor the Better Contracts clause contain a specific reference to disputes arising regarding requests for information; nor is any dispute under the Better Contracts clause currently before an arbitrator.[21] I therefore find no reason, or support in Board law, to depart from longstanding Board policy in this instance.

3. Confidential nature of the information

Respondent further argues that paragraphs 5, 6, and "others such as 18 through 21" require the disclosure of confidential, proprietary information that the Union has taken to enforce its collective-bargaining agreements, disclosure of which would be harmful to the Union and its members.[22]

Under Board law, a party may refuse to furnish confidential information to the other party under certain conditions. The objecting party must show that it has a legitimate and substantial confidentiality interest in the information sought. *Northern Indiana Public Service Co*., 347 NLRB 210, 211 (2006). If such a showing is made, the Board must weigh the objecting party's interest in confidentiality against the requesting party's need for the information, and the balance must favor the party asserting confidentiality. Even if these conditions are met, however, the objecting party may not simply refuse to provide the requested information, but must seek an accommodation that would allow the requesting party to obtain the information it needs while protecting the objecting party's interest in confidentiality. *Indiana Public Service Co.*, supra.

The Board has defined confidential information, which could in certain circumstances, give rise to a valid confidentiality claim, justifying a refusal to turn over information as follows:

> Confidential information is limited to a few general categories that which reveal, contrary to promises or reasonable expectations, highly personal information, such as individual medical records, or psychological test results; that would reveal substantial proprietary information, such as trade secrets; that which reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is privileged, such as memoranda prepared for pending lawsuits.

Detroit Newspaper Agency, 317 NLRB 1071, 1071 (1995).

Here, in its May 21 letter, the Union, without more, made a blanket assertion the information sought was confidential, and could not be released. There was no particularized demonstration of why such information would "trigger specific confidentiality concerns." *Mission Foods*, 345 NLRB 788, 792 (2005). Nor was there any attempt to seek an accommodation from the Association that would allow the disclosure of some information, while protecting the confidentiality interests involved. Id. I conclude, therefore, that that the Union's bald claim that the information request seeks material that is confidential does not excuse the Respondent's failure to comply with the request.

Respondent further argues that paragraphs 28–33 demand information that is "irrelevant or confidential in the administration of this collective-bargaining agreement" and, moreover, that "there is nothing that is dependent upon the identity of the employees in the bargaining unit." Such an argument, of course, overlooks the importance of interchange of employees as a factor in determining whether two ostensibly separate operations are, in fact, somehow related to one another. Respondent has failed to cite any authority to convince me that in circumstances involving suspected single or joint employer or alter ego status, the identity of employees has been deemed confidential. In fact, in similar contexts, the Board has directed that such information be produced. *Gary's Electrical Service Co*., supra at 1145; *Electrical Energy Services*, supra at 933–936; *Proctor Mechanical*, supra at 203.

Accordingly, Respondent's affirmative defense of confidentiality as it applies to paragraphs 5, 6, 18–21, 28–33, or any of the other requests for information contained in the Association's February 13 letter is rejected.

4. Other affirmative defenses

Respondent further argues that requests 12, 13, 14, 15, and 16 are not proper insofar as (1) they demand the identification of information which would be of commercial use to Barton Press' competitors; (2) the Respondent does not know all of the information requested; and (3) Respondent does not have an obligation to sort through a voluminous demand for information to determine if some of it is relevant. In support of this argument, Respondent contends that it requested that the Association review its information demand and reduce it to a "more intelligible form" but they refused.

a. Anticompetitive nature of the request

Respondent's apparent assertion that the Association's true purpose in seeking the information is to obtain information to be put to use against its competitors was, in the first instance, not supported by the evidence adduced in the record with regard to this issue. In particular, during cross-examination,

[21] See, e.g., *Team Clean, Inc*., 348 NLRB 1231, 1231 fn. 1 (2006), where Members Schaumber and Kirsanow state that they would view the information request therein as encompassed by the parties' arbitration clause, and would defer, but in the absence of a majority to reverse Board precedent, they agreed to apply current Board law. Chairman Batista's concurrence in that case demonstrates that, in his view, the fundamental prerequisite for deferral to arbitration is that the issue be arbitrable. A general arbitration clause covering disputes over interpretation, application and compliance with a collective-bargaining agreement does not contain a specific provision as to information requests. In such circumstances, Chairman Batista finds that the issue is not arbitrable, and would not defer. By contrast, in *SBC California*, 344 NLRB 243, 243 fn. 3 (2005), Chairman Batista and Member Schaumber would have deferred the union's request, however there the arbitration clause contained specific procedures relating to requests for information. In that instance, in the absence of a Board majority to overrule extant Board law, the Board found that the administrative law judge correctly applied the Board's policy of nondeferral in information cases.

[22] For the reasons discussed above, I have concluded that the Respondent is not required to respond to pars. 5 and 6 of the Association's information request.

Cashman testified, without contradiction, that he most often does not know who is bidding against him on any particular contract; thus, information regarding Barton Press and Barton Printing would not necessarily be of assistance to him in framing a bid or in providing his company with a competitive advantage. Moreover, even if I were to assume that the Association could put such information to competitive advantage, this by itself does not negate the Union's obligation to furnish otherwise relevant information. *Electrical Workers Local 292 (Sound Employers Assn.)*, 317 NLRB 275, 276 (1995) ("It is well settled that where a party requests information that is relevant to that party's collective-bargaining needs, it is irrelevant that there may also be other reasons for the request or that the information may be put to other uses"); *Central Manor Home for Adults*, 320 NLRB 1009, 1011 (1996) (and cases cited therein).

In arguing that the Association is seeking this information to gain a competitive advantage over its competitors, Respondent notes that the evidence establishes that no grievance has, to date, been filed or discussed among Association members. While it is true that the Board has fashioned an exception to the general "discovery" standard set forth in *NLRB v. Acme Industrial*, 385 U.S. at 437, this is limited to circumstances where it can be shown that the requesting party clearly does not intend to use the information for purposes of collective bargaining. See, e.g., *Coca Cola Bottling Co. of Chicago*, 311 NLRB 424, 425 (1993) (employer not obliged to furnish information on retirement benefit costs where it was demonstrated that union's purpose in requesting information was to communicate it to competitors, not to fulfill any bargaining responsibilities with the employer); *WXON-TV, Inc.,* 289 NLRB 615 (1988) (union not entitled to information that was "akin to a discovery device" pursuant to its pursuit of unfair labor practice charge rather than its statutory duties as collective bargaining representative). In this case, however, the Respondent, who bears the burden of proof as to such issues, has failed to make such a showing. To the contrary, the General Counsel has shown that the Association had reasonable, objective basis for requesting the information, and it is not necessary for the Association to have filed or to have active plans to file a grievance prior to receiving it. *NLRB v. Acme Industrial*, supra at 438.

In a related argument, set forth in its posthearing brief, Respondent has asserted that requiring it to disclose information to the Association regarding its competitors may violate the Sherman Act. I find this defense to be without merit. Initially, as noted above, the only testimonial evidence adduced established that the disclosure of the information sought would not necessarily provide the MLA with a competitive advantage Moreover, even if I were to assume that the information would, in fact, be of some commercial use to the MLA, there is no evidence that it would have eliminated competition on all subjects such as to give rise to an antitrust violation. Moreover, as Board law makes clear, I am not empowered to make such a determination in any event.

In *Dolly Madison Industries*, 182 NLRB 1037 (1970), the Board held that a most-favored nations clause was a mandatory subject of bargaining and not a violation of the antitrust laws. Thereafter, in *Bartenders Union Local 355 (Doral Hotel),* 245 NLRB 774 (1979), the Board held that the union therein was not excused from providing its union contract with one hotel to a competitor hotel on the grounds that it would constitute an antitrust violation. In that case, the Board stated:

> Absent a determination by a tribune of competent jurisdiction that the relevant [most favored nations] clause is unlawful under the antitrust laws, we will not find that Respondent was privileged under the antitrust laws to ignore its contractual obligation to provide information necessary to administer the [most-favored nations] clause.

Subsequently, in *Teamsters Local 272 (Metropolitan Garage)*, 308 NLRB 1132, 1132 fn. 1 (1992), the Board affirmed the administrative law judge's ruling precluding the respondent from adducing evidence that, by supplying requested information, the union would be participating in an antitrust, price fixing violation. As the Board held: "At the point where the Respondent's testimonial evidence invoked potential antitrust and price fixing liability in defense of its alleged unlawful refusal to provide information relevant to its contractual "Most-Favored Nations" clause, however, the judge correctly stated that those contentions were not properly cognizable before the Board and they would not be further entertained."

Accordingly, Respondent's contention that it is excused from providing the MLA with the requested information because by doing so it "may" be engaging in prohibited anticompetitive conduct is unsupported by the record as well as by extant Board law.

b. Burdensome nature of the request

In support of this affirmative defense, Respondent asserted at hearing that: "[i]n our view, we don't have the obligation when we're confronted with a series of grossly improper interrogatories to parse through and decide well maybe this one, maybe that one, maybe not that one." Respondent contends that under the circumstances here, it was the Association's obligation to "boil down what they wanted to something real." Thus, Respondent argues that it should be excused from responding to the Association's information request as it is unduly burdensome. I find that such a claim is without merit.

The fact a party may ask an employer for a large volume of information does not, by itself, render that request overbroad so as to relieve a party from the duty to provide such information where, as here, the information is relevant and necessary to contract administration. A respondent must both timely raise such an objection with the requesting party, but also must substantiate its defense. In this case, on March 9, union counsel advised the Association it did not believe that it had an obligation to engage in far reaching and burdensome efforts to generate responses to the MLA's interrogatories and asked whether there was a "particular and relevant question that we can answer without engaging in a burdensome analysis."

Thus, Respondent asserted a general claim that the Association's requests were burdensome without identifying with particularity which requests would impose such a burden or why. The Union further failed to identify or make any attempt to reach an accommodation with regard to those aspects of the information request which might pose an undue burden. Nor

did Respondent substantiate at the hearing, in any quantifiable way, the time, expense or resources necessary it would have to expend to comply with the information requests. *Pulaski Construction Co*., supra at 937; *Goodyear Atomic Corp*., 266 NLRB 890, 891 (1982), enfd. 738 F.2d 155 (6th Cir. 1984). Accordingly, Respondent's defense in this regard must be rejected.

Respondent has also argued that it simply does not know some of the information requested. I note that to the extent Respondent made such a reply to the Association, the General Counsel has deemed such a response to be in satisfaction of the Union's burden in responding to the information request, and has omitted such paragraphs from the instant complaint.

In sum, Respondent's failure to produce such as information as found above to be relevant and necessary to the administration of the Agreement between the Union and the MLA is a violation of Section 8(b)(3) of the Act. With respect to other information sought by the MLA, the complaint should be dismissed.

Based on the foregoing and on the record considered as a whole, I make the following

CONCLUSIONS OF LAW

1. The Metropolitan Lithographers Association, Inc., is now and at all material times has been an employer within the meaning of Section 2(2) of the Act.
2. Respondent, Local One-L, Amalgamated Lithographers of America is a labor organization within the meaning of Section 2(5) of the Act
3. At all material times, Respondent has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act for all of the employees in the unit set forth above.
4. By failing and refusing to provide to the Metropolitan Lithographers Association, Inc., on its request, information pursuant to paragraphs enumerated 8, 12–21, and 28–33 of its February 13 letter, Respondent violated Section 8(b)(3) of the Act
5. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I will recommend that Respondent furnish the Metropolitan Lithographers Association, Inc., that information requested which has been described above and I will further recommend that it be required to post a notice advising employees and members of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Local One-L, Amalgamated Lithographers of America, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to provide the Metropolitan Lithographers Association, Inc., with the information it has requested since about February 13, 2007, specifically that information sought by paragraphs enumerated 8, 12–21, and 28–33 of its February 13 letter.

(b) In any like or related manner engage in conduct in derogation of its statutory duty to bargain in good faith with the Metropolitan Lithographers Association, Inc., on behalf of bargaining unit employees.

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

(a) Furnish the Metropolitan Lithographers Association, Inc., with the information sought by paragraphs enumerated 8, 12–21, and 28–33 of its February 13, 2007 letter,

(b) Within 14 days after service by the Region, post at its business office and meeting place copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 2 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 members 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.

(c) Sign and return to the Regional Director for Region 2 sufficient copies of the notice for posting by the Metropolitan Lithographers Association, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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[23] 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.

[24] 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."

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to furnish the Metropolitan Lithographers Association, Inc. (the Association) with the information requested in paragraphs enumerated 8, 12–21, and 28–33 of its February 13, 2007 letter to us.

WE WILL NOT in any like or related manner act in derogation of our statutory duty to bargain with the Association on behalf of our members.

WE WILL furnish the Association with the information requested in paragraphs enumerated 8, 12–21, and 28–33 of its February 13, 2007 letter to us.

LOCAL ONE-L AMALGAMATED LITHOGRAPHERS OF AMERICA