U.S. Postal Service *and* National Postal Mailhandlers' Union, Local 313, NPMHU. Case 24–CA–10805

January 5, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On August 5, 2008, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

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

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

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with the prehiring test scores and final ratings of 22 bargaining unit employees hired in 2007. On exception, the Respondent contends that it was denied due process because the complaint alleges that the Respondent unlawfully refused to furnish the scores and ratings of all 8000-plus applicants in 2007, not merely the 22 whom the Respondent hired that year. Additionally, the Respondent argues that it did not furnish the requested information because it had substantial concerns about the applicants' confidentiality interests. For the reasons set forth below, we reject the Respondent's arguments and adopt the judge's finding of a violation.

I. FACTS

The Respondent employs mail handlers, approximately 70 percent of whom are veterans of the armed forces. To apply for work as a mail handler at the Respondent's facilities, applicants must first take "Test 473," which measures the applicants' aptitude, skills and abilities, as well as personal characteristics and experience relevant to the position.

Test 473 is a four-part multiple-choice test. Part A requires applicants to compare two lists of addresses for discrepancies. Part B requires them to provide specified information on a blank postal form, or identify where on a form to place specified information. In part C, applicants are asked to categorize information, first using a coding guide and then without the coding guide, based on memory. In part D, applicants answer questions about their personal characteristics and experience. For example, applicants are asked to gauge the extent to which they agree with the statement, "You do not like having your work interrupted."

Passing scores on Test 473 range from 70 to 100 points. Once the test is scored, applicants may receive an additional 5 to 10 points based on their veterans' preference. An applicant's final rating is the sum of her test score and her veterans' preference points. Once this final rating is determined, applicants are placed on the Respondent's hiring register by rank. The register contains the applicant's name, date of birth, standing, exam date, veterans' points, basic score, and the final rating. Once applicants are hired, they are given an enter-on-duty (EOD) date, which reflects their first day of work and which is later used to compute seniority. Finally, upon hire, the employees' names are removed from the hiring register and placed on the Respondent's hiring worksheet. In 2007, more than 8,000 applicants appeared on the hiring register, from which the Respondent hired 22.

The applicant information package for Test 473 contains a "Privacy Act Statement," informing applicants that providing certain personal information on their answer sheets is voluntary and may only be disclosed for specified reasons, including "as required by the National Labor Relations Act." This personal information encompasses certain data contained on the hiring register, including an applicant's name, date of birth, exam date, and veterans' preference (including corresponding points). The Test 473 answer sheet contains similar language, stating that information provided by applicants may be disclosed "to labor organizations as required by law." Additionally, the Respondent maintains a "Guide to Privacy and the Freedom of Information Act," which is available to the public and which expressly provides that recruiting, examination, and placement records, including records related to "test scores," may, as a standard routine use, be disclosed to a labor organization "[a]s required by law . . . when needed by that organization to perform its duties as the collective bargaining representative of Postal Service employees." Consistent with that privacy guide, there is no evidence that the Re-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to include the appropriate remedial language for the violation found, and to provide for posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice. We shall also delete par. 2(b) of the judge's recommended Order because a general bargaining order is not warranted to remedy this information request violation. See *H & R Industrial Services*, 351 NLRB 1222, 1222 fn. 3 (2007). Finally, we shall substitute a new notice to conform to the language set forth in the Order as modified.

spondent assured applicants or employees that their test scores would not be disclosed to the Union.

Article 12 of a collective-bargaining agreement between the Respondent and the Union, effective from 2006 to 2011, provides that the parties shall "continue relative seniority standing properly established under past principles, rules and instructions," and authorizes unit employees to request correction of their seniority standing.

On July 2, 2007,[3] Union President Julio Figueroa emailed the Respondent's human resources specialist, Carlos Perez, requesting "the register listing for those candidates qualified for hiring," and specifying that "[t]he listing should include the veteran employees as well as non-veterans and their position in the roster." Figueroa sent this request because several bargaining-unit employees, who were veterans of the armed forces, had raised concerns that several nonveterans had been hired before them, even though the veterans had applied much earlier than the nonveterans. On July 17 and 26, Figueroa emailed Perez reiterating his information request. Human Resources Manager Carol Rubenstein responded on July 26, stating that Labor Relations Manager Keith Reid would follow up on Figueroa's request.

In August, Figueroa and Union Vice President Miguel Pazo de Jesus met with Reid in his office. Figueroa reminded Reid of the outstanding information request, and explained that he had received complaints from veteran employees that nonveterans had been given preferential hiring treatment.

By letter dated October 18, Respondent's labor relations manager ,Juan Delgado, informed Figueroa that the information request was extensive and encompassed confidential information. He added that the request was being processed, and that Figueroa would be informed when all of the documents were available. Having received no further response, on November 15, the Union filed an unfair labor practice charge alleging that the Respondent failed and refused to furnish the Union with the information requested on July 2. The charge described the requested information as "the listing for those candidates qualified for hiring, including veteran employees and non veterans, and their positions in the roster."

On December 17, the Respondent's legal representative, Leslie Rowe, informed Figueroa by email that the 2007 hiring register information relating to the applicants' scores would be redacted unless he obtained the applicants' consent to release them. Figueroa emailed Rowe a few hours later, insisting that the Respondent furnish the information in unredacted form or explain its legal basis for refusing to do so. By letter dated December 19, Delgado informed Figueroa that the information would be available for review in Delgado's office or that, alternatively, Delgado could mail him a copy. On December 20, Rowe sent Figueroa an email stating that the Respondent was willing to provide the Union with a copy of the 2007 hiring register, but with the basic and final scores redacted as "a way to satisfy your request without compromising the privacy of the test takers."

The next day, Figueroa reviewed the 2007 hiring register in Delgado's office with the scores redacted. Immediately thereafter, Figueroa emailed Rowe stating that this information did not satisfy the information request, in part because it did not indicate the applicants' veterans' preference.[4] The Respondent's law department subsequently sent the Union a copy of the 2007 hiring register, but with applicants' basic scores and final ratings redacted.

On January 30, 2008,[5] Figueroa submitted a follow-up information request for the "Caribbean District Hiring Registers including the scores of all the candidates (veteran and nonveteran) for the year of 2007," along with the individuals' names, veterans' status, final rating, and eligibility position on the register. Reid responded the same day, inquiring as to the relevance of the follow-up request, noting that many individuals on the 2007 register were applicants and not unit employees. Reid also asked Figueroa to explain why he sought the names of any individuals known to have been "harmed." Also that day, the Union filed an amended charge alleging that the Respondent refused to furnish the Union with "the basic scores and final ratings of the Mailhandler candidates in the Caribbean District registry from January of 2007 to January of 2008." Additionally, Figueroa responded to Reid that the information previously provided was incomplete, and that he had amended the Union's unfair labor practice charges as described above.

On February 1, Figueroa wrote Reid and Rowe repeating the January 30 information request. By email dated February 4, Rowe responded and asked Figueroa whether he was requesting new information. That same day, Reid also responded and explained that he was attempting to assess relevance as to who may have been injured and the Union's right to represent their interests. There was no further communication between the parties.

On February 29, the General Counsel issued a complaint alleging that, on or about January 30, the Union requested "among other things, the basic test scores and final ratings of all prospective candidates for mailhandler positions in Respondent's Caribbean District Registry for calendar year 2007" and that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish that requested information.

[3] All dates are in 2007 unless stated otherwise.

[4] Figueroa further complained to Rowe that the information was incomplete, because it failed to provide the test scores or the "other information requested by the Union."

[5] All dates hereafter are 2008 unless otherwise indicated.

II. THE JUDGE'S DECISION

The judge first found that the test scores of applicants who were not hired by the Respondent involved matters outside the bargaining unit, and were thus not relevant to the Union's bargaining duties.[6] However, the judge further found that, during the hearing, the Union made clear that its information request specifically included the test scores of the 22 mail handlers hired off the 2007 hiring register. The judge explained that this information was necessary for the calculation and verification of seniority for the existing employees, and thus was presumptively relevant to the Union's role as the bargaining representative. In addition, the judge rejected the Respondent's argument that the test scores and final ratings of the 22 employees were confidential, distinguishing *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), in which the Supreme Court found a legitimate and substantial confidentiality interest in the scores of certain job applicants who had failed a psychological aptitude test. The judge found that, unlike *Detroit Edison*, the scores at issue here were of applicants who passed the test and were hired into the positions for which they applied.

The Respondent excepts, reasserting its arguments to the judge, and additionally contending that it was denied due process because the judge found a violation not alleged in the complaint. As explained below, we find that these exceptions lack merit.

III. ANALYSIS

A. Due Process

"Due process requires that a respondent have notice of the allegations against it so that it may present an appropriate defense." *KenMor Electric Co.*, 355 NLRB No. 173, slip op. at 6 (2010); *Earthgrains Co.*, 351 NLRB 733, 735 (2007). Typically, such notice is furnished by the allegations set forth in the complaint. *KenMor Electric*, supra. However, the Board will also consider any representations made by the General Counsel concerning the theory of the allegation. See, e.g., *Iron Workers Local 118 (Pittsburgh Des Moines Steel)*, 257 NLRB 564, 565–566 (1981), enfd. 720 F.2d 1031 (9th Cir. 1983). "The precise procedural protections of due process vary, depending on the circumstances, because due process is a flexible concept unrestricted by any bright-line rules." *Sunshine Piping, Inc.*, 351 NLRB 1371, 1378 (2007).

The Respondent argues that it was denied due process because it had not been placed on notice that its alleged refusal to provide information related to the 22 successful applicants, as distinguished from the thousands of unsuccessful applicants. This argument is without merit because the factual assertion upon which it is predicated –that the Respondent had no notice of an alleged violation involving information concerning the 22 successful applicants –is plainly incorrect.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with the information requested on January 30, including "among other things, the basic test scores and final ratings of all prospective candidates for mailhandler positions . . . for calendar year 2007." That complaint allegation encompasses *all* 8000-plus applicants in 2007, *including* the 22 successful applicants who were hired by the Respondent into the Caribbean District that year. Thus, the Respondent misreads the complaint, and unreasonably so, when it asserts that the complaint covers only unsuccessful applicants and not the 22 successful applicants who were hired into the bargaining unit.

Further, the circumstances demonstrate that the Respondent was on notice that it was alleged to have specifically withheld the scores and ratings of the 22 employees hired in 2007. In its initial request, dated July 2, 2007, the Union specified that "[t]he listing should include the veteran *employees*." (Emphasis added.) In August 2007, the Union reiterated its request and explained to the Respondent that veteran employees had complained that non-veterans had been given preferential hiring treatment over them. Later, in its November 15, 2007 unfair labor practice charge, the Union described the requested information as "the listing for those candidates qualified for hiring, including veteran *employees* and non veterans, and their positions in the roster." (Emphasis added.) Additionally, in its follow-up request of January 30, 2008, the Union specified that it sought the information of "all the candidates . . . for the year of 2007," which, as explained above, includes the 22 successful applicants hired in 2007.[7] Finally, at the hearing, Counsel for the General Counsel represented that the scores and ratings of the 22 successful applicants hired in 2007 were at issue.[8] These facts lead inescapably to the

[6] There are no exceptions to this finding.

[7] Thus, the record contradicts the Respondent's assertion that the Union first requested the scores and ratings of the 22 employees at the unfair labor practice hearing. Indeed, Manager Reid's January 30, 2008 email, in which he indicated that many individuals on the register were not employees, suggests that the Respondent understood that the Union's request included the 22 successful applicants/employees. Reid's January 30 and February 4, 2008 emails, where he questioned Figueroa about which individuals were "harmed" and "injured," also suggest that the Respondent continued to understand that the Union's request concerned veteran employees' complaints of unfair hiring.

[8] The record contains the following colloquy between the judge and counsel for the General Counsel:

Judge Rosas: Okay. You know what? Let me hear it from you. What's, what's the General Counsel and Charging Party's position with respect to the relevance or the justification for the information that was being sought?

Mr. Ortiz: Your Honor, the information sought by the Union is relevant based on –

Judge Rosas: Relevant to who? Relevant with respect to whom?

Mr. Ortiz: To the veterans who may have been discriminated [sic].

Judge Rosas: That were not employed or that were employed and a member of the bargaining unit?

conclusion that the Respondent understood that the scores and ratings of the 22 employees, as well as the other candidates, were at issue. Consequently, we reject the Respondent's due process argument.

The Respondent has also not shown that it suffered any prejudice as a result of the circumstances here. It has not demonstrated how it would have altered its trial strategy had the complaint included a separate, but unnecessary, allegation that the Respondent violated the Act by failing to produce the test scores and final ratings of the 22 successful applicants. Indeed, on brief, the only defense the Respondent pursues is its confidentiality argument, which the parties fully litigated at the hearing. Moreover, had the Respondent genuinely questioned the scope of the complaint before the hearing, it could have filed motions to strike or for a more definite statement. Had the Respondent felt prejudiced by the General Counsel's representation during the hearing that the scores and final ratings of the 22 successful applicants were at issue, it could have filed a motion for continuance. The Respondent, however, did not take advantage of these procedural options. This overall lack of prejudice further supports rejecting the Respondent's due process argument.

B. Merits of the Information-Request Allegation

It is well established that, as part of its obligation to bargain in good faith, an employer must, upon request, furnish a union with information that is relevant and necessary for it to perform its statutory duties. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). The Board applies a broad, discovery-type standard for determining relevance. See, e.g., *Mid-Continent Concrete*, 336 NLRB 258, 258 (2001), enfd. 308 F.3d 859 (8th Cir. 2002). The test scores and final ratings of the 22 bargaining unit employees hired in 2007, as well as their names, veterans' status, and standing on the hiring register are clearly relevant to the Union's statutory duty to police the collective-bargaining agreement. Article 12 of that agreement, which governs seniority, incorporates by reference the Respondent's practice of basing seniority on an employee's enter-on-duty (EOD) date, which, in turn, is directly affected by his test score, veterans' status, final rating, and standing on the hiring register. Indeed, the Respondent essentially concedes the relevance of the information in its brief, stating that "[a]n existing employee who believed his EOD date should have preceded that of another employee because he had taken Test 473 on or before the other employee and had the same or higher final rating than that employee but was hired after him is authorized under Article 12 to request a correction of his seniority standing." [9]

We also agree with the judge, although for a more limited reason, that the Respondent failed to establish its confidentiality defense. A party asserting a confidentiality defense must prove a legitimate and substantial confidentiality interest in the information withheld. *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). Confidential information is limited to a few general categories that would reveal, contrary to promises or reasonable expectations, highly personal information. *Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995). Such confidential information may include "individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits." Id. Additionally, the party asserting the confidentiality defense may not simply refuse to furnish the requested information, but must raise its confidentiality concerns in a timely manner and seek an accommodation from the other party. Id. at 1072.

We find that the Respondent has failed to establish the existence of a legitimate and substantial confidentiality interest. The Respondent bases this defense solely on the argument that applicants (including those who became employees) would be sensitive to disclosure of their test results. Regardless of any such sensitivity, the record shows that applicants had no legitimate expectation that their test results would remain confidential. Rather, given the circumstances, they reasonably should have understood that disclosure could occur for various reasons, including proceedings before the Board. Both the Test 473 information package and answer sheets explicitly state that if applicants choose to provide personal information, including veterans' points, the Respondent may disclose that information to a labor organization or Federal government agencies, such as the Board. Consistent with those statements, the Respondent's privacy guide specifically provides that examination and placement records, the very information in dispute here, may be disclosed to a labor organization as required by law.

Mr. Ortiz: May not have been employed in their turn or may have been selected to a different to which they could may be hired to get a higher position [sic].

Judge Rosas: You're referring to people who are members of the bargaining unit?

Mr. Ortiz: I'm referring to applicants.

Judge Rosas: Who would not be in the bargaining unit?

Mr. Ortiz: As an applicant, they would not be in the bargaining unit.

Judge Rosas: Right, right. And are you also referring to bargaining unit member[s]?

Mr. Ortiz: Exactly.

(Emphasis added.)

[9] We find it unnecessary to pass on whether the requested information was, as the judge found, *presumptively* relevant to the Union's statutory duties. Even assuming it was not, the Union demonstrated its relevance to policing the seniority clause. Moreover, Union President Figueroa explained that relevance to Reid during their meeting in August 2007 and in greater detail at the hearing. See *H & R Industrial Services*, 351 NLRB 1222, 1224 (2007) (union's reasons for requesting information that is not presumptively relevant may be communicated at the unfair labor practice hearing).

There is no evidence that the Respondent made any contrary promises of confidentiality about test scores. Given all these factors, applicants would reasonably understand that disclosure would extend to all portions of their exams, including test results and final ratings. There is no record evidence that any applicant contested the scope or meaning of any of this disclosure language. Applicants who proceeded to furnish their personal information and complete the exam thus had no legitimate confidentiality interest in test results they knew were subject to disclosure to labor organizations. As the basis for the Respondent's confidentiality arguments fails, we accordingly reject its defense.

Contrary to the Respondent's argument, *Detroit Edison,* supra, does not support a contrary result. In that case, the Supreme Court held that the employer had a legitimate and substantial confidentiality interest in the test scores of named applicants who took a psychological aptitude test. The employer in that case "administered the tests to applicants with the express commitment that each applicant's test score would remain confidential." Id. at 306. The Court described that commitment as a "promise of confidentiality to the examinees." Id. at 317. Here, in contrast, the Respondent made no such promise. To the contrary, the Respondent expressly informed applicants about the possibility of disclosure to labor organizations in the information packet, on the answer sheet, and through its guide to privacy and the Freedom of Information Act, which is made available to the public.

For the reasons above, we adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the information it requested on January 30, 2008, regarding the 22 employees hired in 2007, including their test scores, veterans' preference, final ratings, and register standing.[10]

ORDER

The Respondent, United States Postal Service, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the National Postal Mailhandlers' Union, Local 313, NPMHU (the Union) with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the employees in the appropriate unit specified in the collective-bargaining agreement between the Respondent and the Union, which agreement is effective through November 20, 2011.

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

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

(a) Furnish the Union with the information requested on January 30, 2008, regarding the 22 bargaining unit employees hired into the Caribbean District during 2007, including their basic test scores and final ratings.

(b) Within 14 days after service by the Region, post at its San Juan, Puerto Rico facilities copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 days in conspicuous places including all places were notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent in the position of mailhandler at its San Juan facilities since January 30, 2008.

Dated, Washington, D.C. January 5, 2011

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[10] In a footnote in its brief in support of exceptions, the Respondent asserts that previous iterations of the hiring register are unavailable, but offers no record support for that assertion. The Respondent bears the burden of proving that requested information does not exist, and it did not prove that past versions of the hiring register are unavailable. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

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

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish National Postal Mailhandlers' Union, Local 313, NPMHU (the Union) with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of employees in the unit specified in our collective-bargaining agreement with the Union, which is effective through November 20, 2011.

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

WE WILL furnish the Union with the information requested on January 30, 2008, regarding the 22 bargaining unit employees hired into the Caribbean District during 2007, including their basic test scores and final ratings.

UNITED STATES POSTAL SERVICE

Jose Luis Ortiz, Esq., for the General Counsel.
Peter Gallaudet, Esq., of New York, New York, for the Respondent.
Julio A. Figueroa, of San Juan, Puerto Rico, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in San Juan, Puerto Rico, on April 22, 2008. The charge was filed November 15, 2007, by the National Postal Mailhandler's Union, Local 313 (the Union).[1] The complaint, issued February 29, 2008, alleges that the United States Postal Service (the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to provide the Union with the test scores and final ratings of all prospective candidates for mail handler positions in the Respondent's Caribbean District Registry for 2007. On March 14, 2008, the Respondent answered the complaint, admitted its refusal to provide the information, but asserted that: (1) such refusal was lawful because the information sought was not necessary or relevant to the Union's performance of its duties as the exclusive bargaining agent of the unit; (2) the test scores sought were confidential in nature; (3) the Respondent partially responded to the request by releasing nonconfidential information and engaged in discussions attempting to arrive at a compromise solution.

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

FINDINGS OF FACT

I. JURISDICTION

The National Labor Relations Board has jurisdiction over this matter by virtue of section 1209 of the Postal Reorganization Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

The Union is the exclusive bargaining agent for mail handlers in the Caribbean District, which includes the Commonwealth of Puerto Rico (the bargaining unit). Most of the approximately 250 mail handlers in the Caribbean District are located at its main distribution facility in San Juan, Puerto Rico (the San Juan Post Office). Approximately 70 percent of the mail handlers are veterans of the United States armed forces. Julio Figueroa is president of the Union. Miguel Pazo de Jesus is vice president.

The Respondent's personnel involved in this controversy are the following: Carlos Perez, a human resources specialist; Silvia Feliciano, a labor relations specialist; Carol Rubenstein, a human resources manager; Priscilla Maney,[2] a district manager; Keith Reid and Juan Delgado, labor relations managers; and Leslie Rowe, a legal representative.[3]

B. The Collective-Bargaining Agreement

The term of the Union's current collective-bargaining agreement with the Respondent is November 21, 2006, to November 20, 2011.[4] It contains several provisions relevant to this controversy. Article 3 gives the Respondent "the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations" to hire employees for positions within its organization.

Once hired, an employee begins a 90-day probationary period. If that period is successfully completed, Article 12.1 directs a computation of seniority based upon the first day of employment. Article 12.2 addresses the principles of seniority by clarifying that the parties "will continue relative seniority standing properly established under past principles, rules and instructions." It is further noted that, "[i]f an employee requests a correction of seniority standing, it is the responsibility of the requesting employee to identify and restate the specific instructions, rule or practice in support of the request." Responsibility for administration of seniority falls to the "installation head." The installation head is responsible for posting "a seniority list of Mail Handlers on all official bulleting boards for that instal-

[1] All dates are in 2007, unless otherwise indicated.

[2] Stipulated fact No. 5 refers to a "Priscilla Manning" but the joint exhibits indicate that her name is actually "Patricia Maney."

[3] Stipulated facts 1–8; Tr. 66–67.

[4] Jt. Exh. 24.

lation. The seniority list shall be corrected and brought up to date quarterly." As defined under this category, the bid process includes employee requests for assignment to a vacancy, a newly established duty assignment or a preferred assignment.

Article 15 authorizes the Union to file a grievance in the event that a dispute arises between the parties as to wages, hours, and conditions of employment affecting more than one employee in the office. A grievance is defined to include an employee complaint involving the application or compliance with the provisions of the collective-bargaining agreement.

Article 31.3(A) requires the Respondent to "make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the written request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information." Article 31.3(B) further states that "Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information should be directed by the Union to the Vice President, Labor Relations."

C. Test 473 and the Hiring Register

Test 473 was the standard entrance examination given to all applicants for the mail handler position at the Respondent's facilities, including those in the San Juan Post Office. The test is intended to measure an applicant's aptitude, skills and abilities, and psychological factors, such as personal characteristics, tendencies and experiences relevant to the position. Applicants who took Test 473 were given a basic score. The minimum passing score for Test 473 was 70. Additional points for veteran's preference, if applicable, were to be added in order to arrive at a final rating. After Test 473 examinations were processed, applicants were sent a notice of rating, which listed the basic score and final rating. Applicants were then placed, in order of their final rating, on a hiring register for the San Juan Post Office (the 2007 hiring register) for a period of 2 years.[5]

In 2007, over 9000 applicants took Test 473 for placement on the hiring register. Approximately 8000 applicants passed the test and were placed on the hiring register. In accordance with the Respondent's standard procedure, human resource staff was required to consider the applicants with the three highest final ratings for each vacancy. The three applicants were then interviewed and a background investigation performed. After applicants were offered employment and determined to be medically suitable, an enter-on duty (EOD) date was issued. The EOD date is significant because it is the date used in determining seniority. In 2007, the San Juan Post Office hired 22 mail handler applicants.[6]

Once an applicant completes Test 473, the Respondent processes and scores the information electronically in order to determine a basic score. Applicants eligible to receive a veteran's preference receive an additional 5 or 10 points, whichever is applicable. Veteran's preference points, if any, are added onto the basic score to arrive at a final rating. The basic scores of applicants without veteran's preference points become their final ratings. Once a final rating is determined, applicants were to be ranked on the 2007 hiring register in order of their standing. The 2007 hiring register contains, in pertinent part, an applicant's name, date of birth, standing, exam date, applicable veteran's points, basic score, and final rating.[7]

The Applicant Information Package for Examination 473 states in pertinent part, that application information may be disclosed "to entities or individuals under contract with USPS" and "as required by the National Labor Relations Act."[8] The "473 Answer Sheet," which contains personal background information, states that "[p]roviding the required information is voluntary, but if not provided, you may not receive full consideration for a position." Disclosure of the information to others is restrictive to certain instances, including disclosure "to labor organizations as required by law."[9] Finally, the Respondent's Guide to Privacy and the Freedom of Information Act includes "Disclosure to Labor Organizations" as a "Standard Routine Use" of employees' records:

> As required by applicable law, records may be furnished to a labor organization when needed by that organization to perform its duties as the collective bargaining representative of Postal Service employee in an appropriate bargaining unit.[10]

D. The Union's Information Request

Prior to July 2, Figueroa was approached by several bargaining unit employees, who were veterans. They asked Figueroa why nonveteran coworkers started working before them, even though the veterans applied much earlier than the nonveterans. As a result, on July 2, Figueroa sent an e-mail to Perez, with a copy to Feliciano and Rubenstein, requesting a copy of the 2007 hiring register:

> PEREZ: The purpose of this message is to officially request the register listing for those candidates qualified for hiring. The listing should include the veteran employees as well as non-veterans and their position in the roster. Thanks in advance for your anticipated cooperation pertaining this matter. Any questions, feel free to contact us at your earliest convenience.[11]

Figueroa followed up on his request with another e-mail to Perez on July 17, with a copy to Feliciano, Maney, and Reid. He explained that 15 days had passed since his initial request, but no information had been provided. Another 9 days passed with no response and, on July 26, Figueroa sent Perez an e-mail, with copies to Feliciano, Maney, and Reid, requesting the information or a response. A short time later, Rubenstein replied by e-mail that Reid would follow up on Figueroa's re-

[5] The Respondent offered the expert testimony of Martha Hennen, an industrial psychologist, to support its contention that applicants are concerned about the disclosure of test scores because they will reveal information about their aptitude, skills, abilities, and personal characteristics. (Stipulation No. 9–10; Jt. Exhs. 20–22; Tr. 80–91, 98–102, 108–110, 119–121.)

[6] R. Exh. 1; Tr. 104, 116–117, 119.

[7] There was no dispute as to the how the test is administered. (Tr. 101–104, 118, 137; Jt. Exh. 20; R. Exh. 2.)

[8] Jt. Exh. 21, p.2.

[9] Jt. Exh. 22, p.2.

[10] Jt. Exh. 23, p. 68.

[11] Figueroa's motivation seeking the information—determining whether nonveterans with lower final ratings were selected earlier than veteran applicants—was not disputed. (Jt. Exh. 1; Tr. 18.)

quest.[12]

Sometime in August 2007, Figueroa and Pazo de Jesus met with Reid in the latter's office. Figueroa informed Reid that he requested a copy of the 2007 hiring register. He also explained to Reid that he received complaints from employee veterans that nonveteran employees with the same standing as veteran candidates were being selected over veterans for more favorable assignments. Reid told Figueroa he would receive the requested information and brought Perez, a human resources specialist, into the discussion. Perez insisted that the Union was not entitled to the information, but Reid ordered Perez to supply the requested information anyway.[13]

Approximately 2 months elapsed without any information being provided to Figueroa. However, on October 18, Figueroa received a letter from Delgado informing him that the information request was extensive, related to confidential information, and was being processed:

> With reference to the above captioned request you [are] advised that we are currently processing it. As you very well know your request is extensive and encompasses confidential information. While we are in the process of producing such information we are taking the necessary measures to protect it. You will be duly informed when the full documents are available.[14]

Nearly a month passed and, on November 15, the Union filed an unfair labor practice charge alleging the Respondent's failure to provide the information requested on July 2. Another 2 months passed and, on December 17, Figueroa received an e-mail response to his information request from Rowe. She informed Figueroa that 2007 hiring register information relating to applicants' scores would be redacted unless he obtained their consent.

> I am the attorney representing the Postal Service in the Charge that you have brought against the Postal Service regarding your request for information. Please contact me as soon as possible to discuss a resolution. It is my understanding that you received the list of candidates with the actual scores redacted. Do you have consent from these individuals for us to release their scores? If so, please forward that consent to me and the Agency will be more than willing to turn the documents to you without that information redacted. If you do not have consent, perhaps a list of the candidates with the order would suffice. I am not in the office today, but I am checking my messages. Leave me a voice mail or return email of the best time to reach you to discuss further. Thank you.[15]

Figueroa responded to Rowe's e-mail a few hours later and insisted on full compliance with his information request or an explanation of the legal basis for failing to produce the information:

> I'm Julio A. Figueroa, President of Local 313 and the person who brought the charges against the agency that you represent. It is my intent that this request be fulfill [sic] in his [sic] entirety as requested. I have not received any of the documents you mentioned because the local agency have [sic] never provided to the union in any form or shape. It is very interesting that you requested me a consent of documents that are of public domain which not includes any sensitive items that are forbidden from any law or even the HIPPA law. This information is not even included in the restrictive information as stipulated in the ELM. It is also very interesting the renuency of the agency to provide this information but on the other hand, was willing to provide the personal information of these persons to include addresses, cellular phone numbers and even social security numbers without any hesitation. This information that is more restrictive in reality than the requested information by the union. More over, What the agency have to hide by providing information of a hiring roster with the names and rankings and/or scores of the individuals in the roster? Do you really understand what we are talking about? We are talking about information related to my responsibility as the representative of the employees in the US Postal Service. Ms. Rowe, I kindly request to you that if there is any written provision and/or law that include [sic] the information requested is so restrictive and sensitive that the agency can't provide it to any union official or person, please enlighten me with it. If not, I encourage you to provide the information to the union as requested.[16]

On December 19, Delgado sent Figueroa a letter informing him the information was available to be reviewed in his office or that he would mail a copy of the hiring register to him.[17] On December 20, however, Rowe sent an e-mail to Figueroa, with a copy to the Board agent investigating the Union's charge, indicating the Respondent's willingness to provide the 2007 hiring register information, but with the basic scores and final ratings redacted:

> I haven't been able to reach you. I believe we can provide you the requested information without turning over the scores. The eligibility list provides the rank and the veteran's status. The scores will be redacted. The documents are extensive and it will take manpower to go through each sheet. Please contact me as soon as possible. I believe this is a way to satisfy your request without compromising the privacy of the test takers. If you have consent of the anyone [sic] from the list, we can forward their test score to you. There are nearly 1000 pages. We can prepare an estimated bill for the information.[18]

[12] Jt. Exhs. 2–4.

[13] I found Figueroa and Pazo de Jesus credible in their contention that they informed Reid about their concern as to how the 2007 hiring register was being implemented with respect to bargaining unit members. Reid denied that they told him the reason for the request. However, the fact that Reid called Perez, who did not testify, into his office and told him to provide the information, undercut his version of the conversation and corroborates the Charging Party's account. (Tr. 18–22, 67–72, 149, 151–152.) In other words, I find it unlikely that Reid would have ordered the 2007 hiring register information disclosed without an explanation by the union officials as to the basis for their request. On the other hand, I did not find credible Figueroa's testimony to the extent that he specifically requested applicants' basic scores and final ratings at this meeting. First, such information was not specifically mentioned in his July 2 request. Secondly, his trial testimony conflicted with an earlier affidavit indicating that he did not ask for the test scores at the August meeting. (Tr. 18, 51–54, 57.) In any event, the hiring register, in unredacted form, does include basic score and final rating information.

[14] Figueroa did not dispute Delgado's credible testimony that he told Figueroa that it would take "some time" to compile the information. (Jt. Exh. 5; Tr. 138.)

[15] Jt. Exh. 6.

[16] Jt. Exh. 7.

[17] R. Exh. 3.

[18] Jt. Exh. 8.

A short while later, Figueroa responded to Rowe's e-mail, rejecting her offer to provide the information requested, but with the scores redacted:

> MS. ROWE: I submitted you a response on Monday, December 17, 2007 based on the first message that you sent me by e-mail. I believe that I was very specific about it and you never responded back. It is my position, as union president, that the scores that you want "redacted" from the report are outside the scope of the intent of sensitive information and/or restricted information as specified in the ELM, the CIM or any other provisions that rules the USPS. Based on this, I won't be able to accept the information offered because it do not fulfill my request and defeat [sic] the purpose of my collective bargaining investigation. As you noticed already, if you can't contact me by any other means, you can always contact me by e-mail (julio40@prtc.net) or by any other written correspondence available (My fax # is (787) 764-2121 or my address PO Box 366086, San Juan, PR 00936-6086). Again, I'll be looking forward to receive your response at any time.[19]

Rowe responded a short time later and stated she would provide Figueroa the next day with a copy of one page from the register, with the scores redacted, in order to demonstrate how the information request could be granted "without violating the privacy of the applicants." Figueroa responded that he looked forward to reviewing the documentation to see if it would satisfy his request.[20]

On December 21, Figueroa reviewed copies of the hiring register in Delgado's office. He told Delgado the information was not satisfactory due to these redactions. Delgado informed him the basic scores constituted confidential and sensitive information that could not be disclosed.[21]

Later that day, Rowe e-mailed Figueroa a copy of page 715 from the 2007 hiring register. The sheet contained the names of and information relating to six applicants. Information relating to basic scores and final rating scores, however, had been redacted:

> As I promised yesterday, attached is page 715 of the 1398 pages of information. This document reflects applicants who are on the register for the Mail handler position at the Caribbean District. Listed on this page is the following information: The Standing/Ranking of the Applicant, the Applicant's name, Veteran's Points, Exam date, date NTAC mailed out the result, the Enter On Registry date, and Expiration Date. This provides you with sufficient information to satisfy your request for information. As I indicated earlier, if you have consent from any of the applicants, we will be happy to release their score to you. If you would like the entire list in this form, please let me know as soon as possible. Also if you are alleging that these individuals are members of your union, please advise. Thank you.[22]

Later that day, Figueroa responded to Rowe's e-mail and rejected the contention that the information contained on the sheet would satisfy the information request:

> MS. ROWE: First let me clarify something. It is the union who will decide what information will be sufficient or enough because it is the union who is conducting the investigation and or the possibility that a grievance may be filed (EL-312 Section 413 and Article 17 and 31 of the CIM). Second: The consent from the candidates that you are trying to impose on the union is clearly outside the scope of the provisions mentioned above. Third: I personally review this [sic] pages today with Mr. Juan Delgado, Mgr. LR in Puerto Rico and I strongly disagree to receive information which is different from the information properly requested by the union. It is not true that the information you intend to provide include the information you mentioned. As a matter of fact, out of the listing for example, you can't even detect who is a veteran and who is not. Fourth: You have argue [sic] that I need consent or that the information can't be provided but at any time you have provided us with any legal provision that support your resistance to provide the information. Based on these facts, I'm hereby kindly request [sic] that the information be provided by the union as requested and to avoid any more delays. This is been going on since August and I believe enough time has gone by already. Any more questions, feel free to contact me at your earliest convenience.[23]

The Respondent's law department followed up by sending the Union a copy of the 2007 hiring register with confidential information redacted, including basic scores and final ratings. That information was not satisfactory and Figueroa submitted a new information request to the Respondent on January 30. The new request, unlike the July 2 request, specifically requested applicants' basic scores and final ratings. He copied Feliciano and Reid on the request:

> The purpose of this letter is to kindly request the following information: Caribbean District Hiring Registers including the scores of all the candidates (veteran and non-veteran) for the year of 2007. The information shall include the name, the scores, whether or not they are veterans, the final scores for each candidate and their eligibility position in the register. Any questions, feel free to contact me at any time.[24]

Reid responded to Figueroa's e-mail on January 30. Reid inquired as to the relevance of the request, since many on the 2007 hiring register were not employees and, thus, not represented by the Union. He added that the request was being reviewed by the Respondent's legal department, but asked whether the information provided thus far was satisfactory. He also asked Figueroa to explain why he sought this information and the names of any individual known to have been "harmed" as "many on the register are non employees not represented" by the Union. Figueroa replied shortly thereafter:

> The information provided was not complete because all the scores were blackened. Since the case still pending at the NLRB and we have already spoken about this situation once, the charges at the NLRB had to be amended for the clarification purposes and I had to sent you the proper request (even though we verbally have discuss it many times) for the record. The Law department wanted to give me the same information that I rejected previously from Juan and you. Based on this, I again requested that all scores shall be provided as requested. Any questions, let me know.[25]

[19] Jt. Exh. 9.
[20] Jt. Exhs. 10–11.
[21] Tr. 142, 145.
[22] Jt. Exh. 12; R. Exh. 2.
[23] Jt. Exh. 13.
[24] Jt. Exh. 14.
[25] Jt. Exh. 15.

On February 1, Figueroa supplemented his comment to Reid by insisting that the relevance of the information would be determined by the investigation to be conducted by the Union:

> As an experience Labor Relations lawyer, you should be aware that the relevancy of the information requested is based on the investigation that the union will be performing.
>
> How I will be able to probably present a case when I don't have information necessary, for comparison purposes, to determine whether or not a violation really occurred. You also know that in contract cases the union have the burden of proof and that is the purpose and the necessity of this report. More over, if you don't want to provide the information now, it is your prerogative but I have interest, the right and I also have the "need to know" if this information will be a key element in demonstrating my case when I presented, if that's the case.
>
> You are also very aware of the provisions of Article 17, 19 and 31 of our CBA, who entitle me to this information.
>
> I have a question: Why are you so reluctant know to provide this information when you have personally agreed to provided to me in the prior occasion? Is there something I should not know now?
>
> Any questions, please feel free to contact me at your earliest convenience.[26]

On February 1, Figueroa e-mailed Rowe, but addressed it to Delgado. He requested a copy of the 2007 hiring register including the names of all candidates, their basic scores, veterans preference status, final rating scores, and eligibility positions.[27] Rowe replied on February 4:

> Are you requesting the same list of information that was sent to you previously? You should have received a list containing over 8,000 names as recently as January 8, 2008. Are you now asking for the test scores (basic and final) that were previously redacted from the list? Or are you asking for something different? The list that was forwarded to you contains the name, eligibility, rank, and veteran's status for the Mail Handler's position. Please advise. Thank you.[28]

Reid also replied to Figueroa on the same day, explaining that he was "attempting to assess relevance as to who may have been injured and your right to represent their interest." He further explained that there was a problem with the request to the extent that it sought information about individuals that don't work for the Postal Service and something that happened to them prior to [being] hired." Reid concluded with an offer to work on a "resolution if you provide me more information about what you are trying to prove."[29] There was no further communication between the parties.

Analysis

The General Counsel contends that the Respondent is required to provide the test scores on four grounds: the Respondent is required under the Privacy Act to provide the Union with information which is presumptively relevant in accordance with the National Labor Relations Act; the test scores on the hiring register are essential to determine whether the Union should file a grievance regarding the Respondent's possible departure from its hiring standards and policies; and the Respondent's requirement of a waiver from applicants is unfounded, unrealistic, and overly burdensome; and the Union's need for test scores outweighs the Respondent's confidentiality claim.

The Respondent resists disclosure of the basic scores and final ratings on several grounds. First, the Respondent asserts the General Counsel failed to demonstrate that knowledge of the scores of more than 8000 applicants was necessary and relevant to the performance of its duties. In the alternative, even if the test scores were relevant to the Union's performance of its duties, the Respondent asserts it met its burden of showing an adequate reason for refusing to disclose them, unless applicants consent to their release. Finally, the Respondent contends that the request for the test scores on the hiring register as of July 2007 contained the names of applicants, not the employees who were hired. As such, the information requested would not have included the names and test scores of the veteran employees who complained to the Union or the nonveteran employees that they complained about.

An employer is obliged to provide a union, upon request, information that is relevant and necessary to its role as the exclusive bargaining representative of its employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Where the requested information involves matters outside the bargaining unit, however, the union has the burden of demonstrating a reasonable objective basis for the information. *Comar Inc.,* 349 NLRB 342, 361–362 (2007); *Tri-State Generation & Transmission Assn.,* 332 NLRB 910 (2000); *Shoppers Food Warehouse,* 315 NLRB 258, 259 (1994). That burden is not an exceptionally heavy one, requiring only a showing of "probability that the desired information [i]s relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437; *Shoppers Food Warehouse*, supra at 259; *Postal Service*, 310 NLRB 391, 392 (1993). In this regard, the Board follows the broad standards of pretrial discovery in determining the relevance in information requests. *Kathleen's Bakeshop, LLC*, 337 NLRB 1081, 1093 (2002), enfd. 2003 WL 22221352 (2d Cir. 2003).

Information pertaining to bargaining unit employees is presumptively relevant and necessary, and must be produced. In this regard, the General Counsel argues, at page 7 of his brief, that the Union needs a copy of the 2007 hiring register for the San Juan Post Office in order to "verify that the sum of an applicant's test score, plus the veteran points, add up to the applicant's ranking in the hiring roster. Without the test scores, the Union is unable to objectively examine whether the Postal Service has engaged in the discrimination of employee veterans by not adding the veteran points to an applicant's test score." Figueroa followed up on his July 2 information request by meeting with Delgado in August and asking for a copy of the 2007 hiring register. It was not reasonably foreseeable at that time, however, that the Respondent, in processing the request, would ultimately provide a redacted version of the 2007 hiring register. That issue arose, in fact, on December 21, when the Respondent provided the Union with a redacted version of the 2007 hiring register. Figueroa objected to that production, but resubmitted another information request on January 3, specifically requesting another copy of the hiring register, but unredacted as to the basic scores and final ratings of applicants.

[26] Jt. Exh. 16.
[27] Jt. Exh. 17.
[28] Jt. Exh. 18.
[29] Jt. Exh. 19.

In this case, the Union's July 2 request sought a copy of the entire 2007 hiring register for the San Juan Post Office. Of the over 8000 applicants initially placed on the 2007 hiring register, 22 were hired and their names removed from the list. There were complaints among that group hired—the veteran employees—that nonveterans with lower final ratings were hired before them. Figueroa did not, however, state that he was attempting to investigate the Respondent's implementation of Article 12, the seniority provision in the collective-bargaining agreement. Nor did he seek to limit the information sought to the 22 hired applicants/bargaining unit members.

Information sought regarding applicants for employment is typically found to involve matters outside the bargaining unit. See, e.g., *Finch, Pruyn & Co.*, 349 NLRB 270, 278–280 (2007) (prehire drug and alcohol testing of applicants is not a mandatory subject of bargaining and, therefore, information concerning such testing is not deemed presumptively relevant). Accordingly, 2007 hiring register information as to applicants who were not hired and, thus, are not bargaining unit members, would not be presumptively relevant. As to that information, the Union has the burden of demonstrating a reasonable objective basis for the information. In addition, the Union must address the concerns about confidentiality raised by the Respondent, who relies on the Supreme Court's application of privacy interests to proposed disclosure of employee aptitude test scores in *Detroit Edison Co.* In this regard, the Respondent, at pages 28–36 of its brief, relies on the Court's recognition of the fact that the revelation of aptitude test scores "may threaten an individual's ego and sense of self-worth." The Respondent also refers to the testimony of its industrial psychologist, Dr. Martha Hennen, to say essentially the same thing.

Until recently, longstanding Board precedent held that "the requesting union need not inform the signatory employer of the factual basis for its requests, but need only indicate the reason for its request." *Corson & Gruman Co.,* 278 NLRB 329, 334 (1986), enfd. 811 F.2d 1504 (4th Cir. 1987). A majority of the Board questioned that standard, however, in *Contract Flooring Systems, Inc.*, 344 NLRB 925 (2005), indicating they did not necessarily agree with Board precedent that a union can simply state a reason for its request. In any event, the burden of establishing the relevance of such information "is not exceptionally heavy" and would be satisfied by "some initial but not overwhelming demonstration by the union." *St. George Warehouse, Inc.,* 341 NLRB 904, 925 (2004), citing *Hertz Corp.,* 319 NLRB 597, 599 (1995).

There is no contention that the Respondent discriminated against any of the applicants who were not hired. As such, information concerning applicants who were not hired and remained on the 2007 hiring register involves matters outside the bargaining unit and has no relevance to this case. Cf. *Mid-Continent Concrete*, 336 NLRB 258 (2001), enfd. 308 F.3d 859 (8th Cir. 2002) (union informed employer of factual basis underlying its contention of discrimination based on applicant's union activities); *Hardesty Co*., 336 NLRB 258 (2001) (union entitled to review applicant list where it informed employer of belief that union member was discriminated against, in part, because he wore a union cap).

Nevertheless, the facts underlying the Union's concern about the improper administration of seniority among the mail handlers hired in 2007 were communicated to the Respondent at the hearing on April 22, 2008. Article 12 of the collective-bargaining agreement requires computation of seniority based upon the first day of employment, incorporates prior seniority principles, authorizes employees to request correction of seniority standing, and requires the installation head to post a seniority list, which is to be updated quarterly. As such, information necessary for the calculation and verification of seniority of existing employees, such as that contained on the 2007 hiring register, would be presumptively relevant to the Union's role.

It is not clear whether the Respondent also asserts confidentiality under *Detroit Edison* as also extending to a class of disclosure limited to the 22 employees hired in 2007. In any event, it does not. Although *Detroit Edison* involved a request for the testing records of current employees, the testing related to their applications for *new* positions. As such, the union sought the records of unsuccessful applicants. Contrary to the information request in *Detroit Edison,* the disclosure of the 2007 hiring register information to the Union would have related only to the successful applicants and bargaining unit members. The Respondent here seemed to recognize this right on the part of the Union in its responses to the Union on December 21, 2007 and January 30, 2008.

Under recent Board law, whether the Respondent's duty to respond to the Union's information request runs from July 2, 2007 or April 22, 2008, the Respondent would, in either instance, be ordered to provide the requested information. See *H & R Industrial Services,* 351 NLRB 1222, 1226–1227 (2007). See also *Dodger Theatricals Holdings, Inc*., 347 NLRB 953 fn. 3 (2006), where Member Schaumber, citing *Contract Flooring Systems, Inc.*, 344 NLRB 925 (2005), stated that he would find a violation where the union apprises the employer of its factual basis at the unfair labor practice hearing, the union's disclosure supports the relevancy of the information, and the employer continues to withhold it. The violation would be as of the date of the hearing, but the remedy is the same. The Respondent would be ordered to disclose the relevant and necessary information.

In view of the trial testimony supporting the relevant portion of the information request, which is authorized pursuant to the seniority provisions of Article 12 of the collective-bargaining agreement, I find that the Union had a valid reason for requesting information which was necessary and relevant to its representation of employees. The Respondent provided a satisfactory defense to the production of the entire 2007 hiring register, but having received a valid explanation at the hearing, it is not justified in continuing to refuse, as it seems to do in its brief, to disclose the test scores of the 22 mail handlers hired by the San Juan Post Office in 2007. Accordingly, by failing and refusing to provide necessary and relevant information to the Union which was requested by e-mail transmissions on July 2, 2007 and January 30, 2008, and further clarified at the hearing on April 22, 2008, the Respondent has violated its duty to bargain in good faith, and has violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By failing and refusing to provide the Union, in writing, with the information requested in the Union's information request of July 2, 2007 and January 31, 2008, and more fully explained at the hearing on April 22, 2008, the Respondent has unlawfully refused to bargain with the Union and has violated Section 8(a)(5) and (1) of the Act.

2. The violation set forth above is an unfair labor practice af-

fecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. I shall recommend that Respondent be ordered to furnish, in part, the requested information to the Union, and to post an appropriate notice.

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

ORDER

The Respondent, U.S. Postal Service, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with National Postal Mailhandler's Union, Local 313 by refusing to furnish it with information that it requests that is relevant and necessary requested to the Union's performance as the collective-bargaining representative of the Respondent's bargaining unit employees.

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

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

(a) Promptly furnish the Union with the relevant portion of the information requested in its July 2, 2007 e-mail transmission, specifically, all of the information contained on the 2007 hiring register, including the basic scores and final ratings, for the 22 applicants hired for the San Juan Post Office in 2007.

(b) On request, bargain collectively in good faith with the Union with regard to wages, hours, and other terms and conditions of employment of employees in the appropriate unit specified in the collective-bargaining agreement between Respondent and the Union which agreement is in effect through November 20, 2011.

(c) Within 14 days after service by the Region, post at its San Juan, Puerto Rico facilities copies of the attached notice marked "Appendix."[31] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all employees and former employees employed by the Respondent in the position of mail handler at the San Juan Post Office during 2007.

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

Dated, Washington, D.C. August 5, 2008

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the National Postal Mailhandler's Union, Local 313 by refusing to furnish it with information that it requests that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights set forth above.

WE WILL promptly furnish the Union with the relevant portion of the information requested in its e-mail transmissions of July 2, 2007 and January 30, 2008, specifically, all of the information contained on the 2007 hiring register, including the basic scores and final ratings, for the 22 applicants hired for position of mail handler for the San Juan Post Office in 2007.

U.S. POSTAL SERVICE

[30] 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.

[31] 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."