

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
UNITED PARCEL SERVICE, INC.,)	
)	
Respondent,)	
)	Case No. 26-CA-072915
and)	26-CA-076655
)	26-CA-078241
TEAMSTERS LOCAL UNION NO. 480,)	
affiliated with INTERNATIONAL)	
BROTHERHOOD OF TEAMSTERS,)	
)	
Charging Party.)	

**BRIEF IN SUPPORT OF EXCEPTIONS ON BEHALF OF
UNITED PARCEL SERVICE, INC.**

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STATEMENT OF ISSUES

1. Whether the ALJ erred when she failed to find that the Union engaged in bad faith bargaining when it submitted voluminous requests for information that were overly broad, duplicative, and unduly burdensome to UPS (Exception No. 1).

2. Whether the ALJ erred when she failed to find that UPS was justified in not producing documents responsive to overly broad, duplicative, and unduly burdensome information requests (Exception No. 2).

3. Whether the ALJ erred when she failed to find that UPS acted in good faith by attempting to respond to the Union's voluminous, overly broad and unduly burdensome information requests by producing thousands of documents that were responsive to those requests and that UPS did not unlawfully delay in providing responsive information (Exception No. 3).

4. Whether the ALJ incorrectly concluded that no remedy could be issued for the "timing, duplicity of requests, and the overly broad nature of many of [the Union's] requests" (Exception No. 4).

SUMMARY OF ARGUMENT

The intended purpose of the National Labor Relations Act (the “Act”) was to reduce industrial strife and promote labor relations. To that end, the Act requires that labor and management confer in good faith with respect to terms and conditions of employment. United Parcel Service, Inc. (“UPS”) has satisfied that requirement and has engaged in good faith bargaining by respecting the Union’s right to make requests for information that are necessary for the proper performance of its duties as a bargaining representative and providing necessary and relevant information. The Union, however, has taken that right well beyond its intended purpose and deliberately abused the information request process by engaging in a bad faith campaign to inundate UPS with vague, overly broad and duplicative information requests that are not necessary to investigate and resolve underlying grievances.

Since 2008, the Union has submitted over 1,600 separate requests for information related to hundreds of grievances and a majority of these requests were sent to UPS immediately prior to the Union filing its first unfair labor practice (“ULP”) charge referenced in the Consolidated Complaint. Simple math reveals that the Union has submitted more than one information request per day for every working day during a five year period. Yet at no time was the Union willing to compromise on any of its requests - taking an “all or nothing” approach with which it was impossible for UPS to comply. The Union’s predominant motivation is crystal clear: to harass, overburden, and inconvenience UPS with information requests and improperly force concessions on bargaining issues. Such is not the spirit of the Collective Bargaining Agreement (“CBA”) or the NLRA.

The ALJ even found that the scope and manner in which the Union requested information demonstrated its “disinterest in genuine communication with UPS,” “had the effect and purpose of impeding, delaying or preventing UPS from lawfully responding to the thousands of

requests,” and which “brings into question the Union’s motivation in requesting information in the manner that it did.” The ALJ also found that “requests were often untimely and the requested documents were arguably not useful or even relevant to the issue of the grievance.” It appeared to the ALJ that the Union was more interested in documenting its requests for information than it was in actually obtaining the requested information. Despite making these findings based upon sufficient evidence in the record, the ALJ failed to correct the Union’s bad faith.

It is well settled that the law does not require UPS to respond to requests made in bad faith, or to produce documents that are irrelevant, overly broad, or unduly burdensome. The ALJ erred in failing to take into consideration the totality of the record of evidence specifying that what the Union did was bad faith bargaining.

STATEMENT OF THE CASE

This action involves three consolidated ULP charges (26-CA-72915, 26-CA-76655, and 26-CA-7824) filed by the Union on January 23, March 5 and April 6, 2012, respectively, each of which allege that UPS violated 8(a)(1) and 8(a)(5) of the NLRA by delaying and/or failing or refusing to furnish requested information. GC Exhibit No. 1(a), (c) and (e).¹ The Acting General Counsel issued the Consolidated Complaint on June 28, 2012, and thereafter amended the Complaint on August 15, 2012. GC Exhibit No. 1(g) and (l). The Consolidated Complaint relates to 558 grievances and at least 1,600 requests for information made by the Union since July 14, 2008. Over 1,400 of these requests seek information related to the same, singular issue: whether shifter employees² were denied overtime opportunities. GC Exhibit No. 1(g).

On July 12, 2012, UPS filed its Answer to the Consolidated Complaint denying that it violated the Act and raising several affirmative defenses, including that the Union's information requests were submitted in bad faith, and the specific information requested was overly broad, duplicative, and unduly burdensome. GC Exhibit No. 1(k). On August 28-30, 2012, a hearing was held before Administrative Law Judge Margaret G. Brakebusch in Nashville, Tennessee.

On March 4, 2013, the ALJ issued a ruling and found, in part, that UPS engaged in unfair labor practices by delaying and failing to provide certain requested information ("ALJ Decision"). While the ALJ did not find that the Union engaged in bad faith bargaining, she did determine that over 100 of the General Counsel's Complaint paragraphs - encompassing hundreds of information requests - lacked merit, in whole or in part, and that the Union specifically engaged in tactics that called into question its underlying motivation and that were

¹ UPS will refer to the General Counsel exhibit numbers as "GC Exhibit No. ___".

² A "Shifter" is a job position at UPS whose primary responsibility is driving semi-tractor trailer trucks in the UPS facility parking lot to properly position trailers at the loading docks. Tr. at 129.

“crafted to guarantee [UPS’] failure in responding” to information requests. ALJ Decision at p. 28.

While the ALJ found that the “timing, duplicity of requests, and the overly broad nature of many ... requests [] support a finding that there are issues at hand that are totally separate and unrelated to the Union’s interest in obtaining the requested information,” the ALJ failed to direct a remedy that addressed the Union’s apparent and demonstrative bad faith conduct. ALJ Decision at p. 34. Instead, the ALJ concluded that the Union did not engage in bad faith bargaining and that UPS was required to produce documents responsive to the Union’s bad faith information requests over the objection that such requests were overly broad and unduly burdensome to UPS. ALJ Decision at pp. 6-11, 34.

On April 3, 2013, the Acting General Counsel requested clarification of the ALJ’s March 4, 2013 Decision. On May 10, 2013, the Board granted this request and transferred the proceeding back to the ALJ for further clarification. On July 2, 2013, the ALJ issued a supplemental decision correcting several portions of her decision relating to contradictory rulings (“ALJ Supplemental Decision”). The ALJ clarified the March 4, 2013 Decision and found that she had mistakenly held that UPS violated the Act as alleged in Complaint paragraphs 83, 288-89, 296-98, 318-21 and 353-54, and unlawfully failed to provide information referenced in Complaint paragraphs 15 and 215. ALJ Supplemental Decision at pp. 1-5. The proceeding was thereafter transferred back to the Board. ALJ Supplemental Decision at pp. 5.

Pursuant to 29 CFR §102.46, UPS takes exception to the ALJ’s March 4, 2013 findings and conclusions referenced in UPS’ Exceptions and submits that these findings and conclusions should be reversed.

STATEMENT OF FACTS

A. Background Facts

UPS transports packages and freight throughout the United States and the world. This dispute involves UPS's operations at the Whites Creek Hub in Nashville, Tennessee. Official Report of the Proceedings ("Tr.") at 34. The Whites Creek Hub is the largest package hub operation for UPS in Nashville, Tennessee, with approximately 1,650 employees. Id. Teamsters Local Union No. 480, affiliated with the International Brotherhood of Teamsters (the "Union"), is the exclusive bargaining representative for UPS employees at the Whites Creek Hub. The Union and UPS are parties to the National Master United Parcel Service Agreement and the Southern Region Supplemental Agreement (the "CBA"). GC Exhibit No. 9. In order to resolve any dispute over an employee's terms and conditions of employment, the CBA includes a multi-step grievance procedure that provides, in pertinent part:

SECTION 1

"[A]ny grievance, complaint, or dispute . . . shall be handled in the following manner:

1. The employee shall report it to the employee's shop steward in writing within five (5) working days. The steward shall attempt to adjust the matter with the supervisor within forty-eight (48) hours.
2. Failing to agree, the shop steward shall promptly report the matter to the Union, which shall submit it in writing and attempt to adjust the same with the Employer within fifteen (15) days.
3. If the parties fail to reach a decision or agree upon a settlement in the matter in any Local Union area, it shall be submitted within fifteen (15) days to the Southern Region Area Parcel Grievance Committee.

...

SECTION 2 - GRIEVANCE COMMITTEE - S.R.A.P.G.C.

The decision of the majority of the panel hearing the case shall be binding on all parties. Decisions reached at each step of the grievance procedure including the Supervisor-Steward level shall be final and binding.

...

SECTION 3

If any grievance or dispute cannot be satisfactorily settled by a majority decision of the panel of the S.R.A.P.G.C. and Deadlock Panel, then the grievance shall be submitted to an arbitrator through the Federal Mediation and Conciliation Service by either or both parties within five (5) days....

The decision of the arbitrator shall be final and binding on the parties and employees involved....”

Id. The grievance process is “designed to resolve grievances quickly.” Tr. at 498. While the Union has a right to request information in order to investigate and/or process grievances, that right is not without limits. In accordance with Article 47 of the CBA, any request for documents/information must be “*reasonably related* (based on NLRA standards) to *the pending grievance.*” GC Exhibit No. 9, at Art. 47 (emphasis added). Despite this limitation, the Union considers *any information* requested to be necessary and relevant to a grievance. Tr. at 47-48, and 356. In fact, if information requests are not tied to any grievance – though required by the CBA – the Union will retroactively tie a request to a later-filed grievance regarding the particular issue prompting the initial information request. Tr. at 383. There is nothing in the Act or the CBA that supports this tactic.

B. The 2010 Settlement Agreement

Prior to June 16, 2010, the Union filed several grievances regarding “the methods used by UPS to assign work opportunities” to Shifters. GC Exhibit No. 8(a)-(d), 289(a); Tr. at 64-70. These grievances were not resolved in final and binding arbitration. Instead, on June 16, 2010, the Union and UPS entered into a settlement agreement that resolved these grievances (“June

2010 Settlement Agreement”) (attached as **Appendix “A”**). The June 2010 Settlement Agreement provides, in relevant part, as follows:

“B. A list will be posted by the Company by the first of every month to be signed by 22.2 and 22.3 and part-time shifter employees interested in extra/coverage work opportunities. Shifter employees will be called by steward verification to first 22.2 then 22.3 employees, and if necessary, part-time shifter employees; [and]

C. The Parties agree that all extra/coverage work opportunities in the shifter classification will be offered to all full-time 22.2 and 22.3 shifter employees prior to part-time shifter employees.”

Id. The Union alleges that UPS breached the CBA because it:

- violated Paragraph B of the Settlement Agreement when it purportedly failed to “post[] Interest Lists on a monthly basis as agreed” and “properly utilize[] the steward verification process to call shifter employees”.
- violated Paragraph C of the Settlement Agreement when it purportedly: “utilize[d] Seasonal Shifters”; “force[d] full-time 22.2 Shifters out of their classification to perform other work while utilizing Seasonal Shifters”; “improperly laid off part-time Shifters;” and “utilized out of classification employees instead of Shifters”.

See Teamsters Local Union 480 v. UPS, 3:12-cv-00178 (M.D.Tenn, Sept. 13, 2012) (attached as **Appendix “B”**).

Since the 2010 Settlement Agreement, the Union has filed approximately 490 shifter-related grievances and hundreds of requests for information that are subject to the Consolidated Complaint. GC Exhibit No. 6; Tr. at 67, 99. According to the Union’s Business Representative, Len Hughes (“Hughes”):

The Company is using anyone and everyone they want to perform shifting work and they have . . . all but destroyed the Shifter classification over the course of years. And this is what we’re trying to resolve and get our arms around.”

Tr. at 229. Hughes has gone on a crusade to overburden UPS with information requests to force it to concede this issue.

C. The Constant Barrage of Information Requests

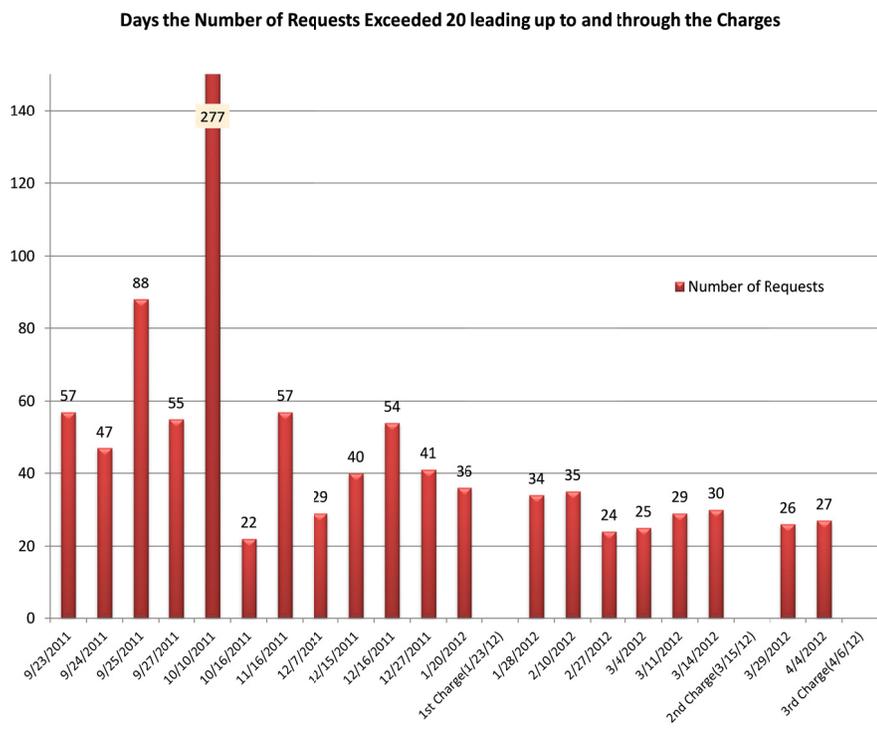
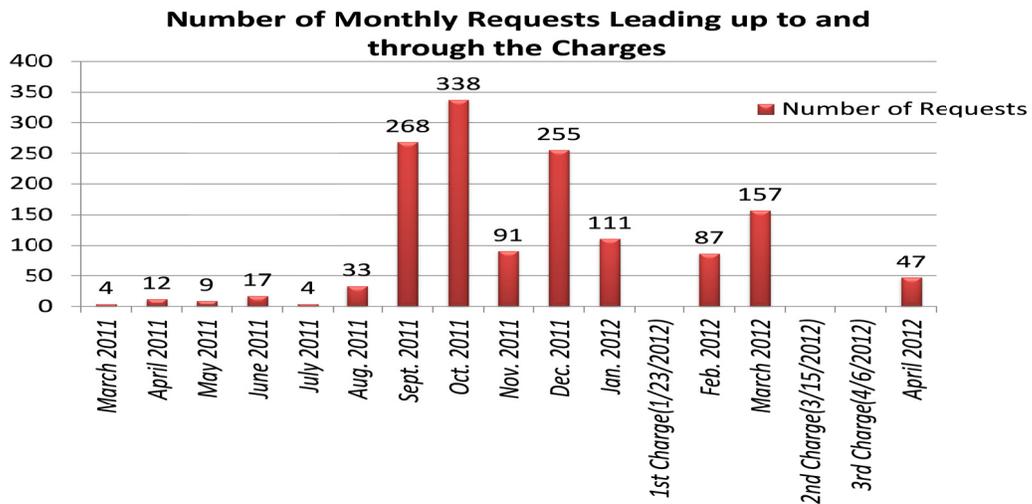
During the period February 2008 through April 2012, the Union engaged in a campaign demanding a tremendous amount of information from UPS including submitting at least 1,600 separate information requests with multiple sub-parts in each request. GC Exhibit No. 9; Tr. at 502-03; ALJ Decision at p. 13. The Union submitted information requests in various forms including on grievances, by separate letter and/or email, and on multiple occasions, repeated hundreds of requests by email. GC Exhibit No. 2; Tr. at 43-45. It is undisputed that information requests for the Center are “significantly higher” than any other center within the Union’s jurisdiction. Tr. at 500-03, 605-06. By his own admission, Hughes has no idea how many information requests are associated with certain grievances, or whether anyone from the Union actually speaks to the grievant prior to making an information request. Tr. at 429-31.

As a result of the Union’s voluminous information requests, in June 2010, UPS was forced to bring in a full-time supervisor to assist in responding to these requests because it “could not keep up with all of the information that was requested” in the regular course of business. Tr. at 500. UPS moved then On Road Supervisor Amy Snead (“Snead”) to its District Labor Department to assist Whites Creek in responding to information requests. Tr. at 575-76. Snead’s duties, which were to manage the information requests, gather the information, compile all information and documents responsive to the requests, and give the information and documents to the individual requesting it, took more than forty hours per week. Tr. at 576-77, 579, 589. There is no dispute that UPS made a good faith effort to respond to the Union’s information requests producing thousands of documents. ALJ Decision at p. 18; Tr. at 428-29.

Despite those efforts, the Union paralyzed UPS with information requests. The number of requests made by the Union are staggering. Between September 2011 and November 2011, the Union sent UPS over 700 requests for information, somehow expecting UPS to drop everything and respond to its burdensome requests. GC Exhibit Nos. 1 and 2. The following charts illustrate this point:³

³ Chart No. 1 labeled “Number of Monthly Requests Leading up to and through the Charges” is supported by GC Exhibit Nos. 10-544.

Chart No. 2 labeled “Days the Number of Requests Exceeded 20 Leading up to and through the Charges” is supported by GC Exhibits Nos. 70-75, 95-108, 125, 141-142, 482-493, 499-502, 504-521 **(9/23/2011)**; 80-83,119, 121-137, 141-159, 163, 182-183, 522-524, 526, 528-529 **(9/24/2011)**; 76-79, 84-91, 138-140, 160-162, 167-181, 184-210, 223-226, 244-246, 250, 252-257, 259-260, 262, 525 **(9/25/2011)**; 109-118, 164-166, 227-243, 247-249, 251, 258, 261, 263-279, 494, 527 **(9/27/2011)**; 15-28, 50, 70-210, 223-280, 282, 299-300, 303, 305-317, 341, 436, 483-494, 499-502, 504-529 **(10/10/2011)**; 10, 15-28, 120, 280, 282, 299-300, 303, 305-317, 331, 341, 344 **(10/16/2011)**; 109-118, 164-166, 227-243, 247-249, 251, 258, 261, 263-279, 494, 527 **(11/16/2011)**; 30-43, 50, 53-54, 58-61, 65-68, 355-357, 388 **(12/7/2011)**; 110, 164-166, 227-236, 238, 240-243, 247-249, 253, 261, 263-269, 271-279, 341, 494 **(12/15/2011)**; 14, 29-69, 351, 355-357, 375, 421-424, 452-456 **(12/16/2011)**; 10-11, 304, 331, 342-344, 358-364, 366-372, 374, 398, 404, 431, 434-437, 444-447, 449, 467-472 **(12/27/2011)**; 365, 368-373, 379-398, 401, 427-433, 457-458 **(1/20/2012)**; 365, 368, 370-373, 378-385, 387-398, 403, 427-433, 457-458, **(1/28/2012)**; 347, 365, 368, 370-373, 379-382, 384-393, 395-396, 398, 427, 429, 431-433, 450-451, 457-458, 537-539 **(2/10/2012)**; 407-417, 419-420, 438-441, 459-462, 465-466, 473 **(2/27/2012)**; 347, 408-417, 419-420, 438-440, 459-462, 465-466, 473, 539-541 **(3/4/2012)**; 286-289, 296-298, 301-302, 318-322, 324-330, 332-339 **(3/11/2012)**; 286-289, 296-298, 301-302, 318-330, 332-333, 335-339, 474, 503, 538, 542 **(3/14/2012)**; 284-285, 290-294, 354, 376-377, 399-400, 402, 425-426, 463, 476-479, 496-498, 533-535, 543 **(3/29/2012)**; 284-285, 290-294, 354, 376-377, 399-400, 402, 425-426, 463, 476-479, 496-498, 533-535, 544 **(4/4/2012)**.



It is hard to imagine that any entity could possibly respond to such voluminous requests for information.

D. The Union’s Information Requests have Created an Insurmountable Backlog of Grievances

The Union has utilized the information request process as leverage to settle grievances. In hopes that the Union would actually evaluate its grievances *before* requesting voluminous and in many instances irrelevant information, UPS requested the Union wait until a grievance reaches a local hearing before sending an information request. Tr. at 431. While the Union initially agreed to UPS’s request, and as it even now admits that it only needs to “thoroughly investigate the grievance” if the parties are unable to resolve it at the local level, it ultimately did not honor this agreement. Tr. at 59, 431-32, 504. Instead, the Union repeatedly submitted requests prior to a local hearing, before even evaluating the grievance, or asking UPS what its position was regarding the grievance. Tr. at 109, 151, 213, 430-32, 464-66, 58, 281, 332-33. It also refused to schedule local hearings until it received the thousands of documents requested – whether or not those documents were even remotely necessary or relevant to the pending grievance. Tr. at 109, 151, 213, 322, 464-65, 504, 509-10. As a result, over 2,000 grievances remain unresolved and unscheduled for hearing, of which 1,700 relate to the shifter issues. Tr. at 99, 430.

E. The Union has Requested Information that Impedes, Delays, and Prevents a Lawful Response

As the ALJ found after hearing all of the evidence, the Union engaged in several information request tactics that were specifically designed to “impede, delay, or prevent a lawful response” from UPS. ALJ Decision at p. 18. Those tactics included the following:

1) The Union utilized a “shotgun” approach to information requests.

It is undisputed that the parties do not know what information, if any, is actually needed to resolve a grievance, until they discuss it at the local hearing. Tr. at 109, 281, 504, 509-10. Nevertheless, the Union, by its own admission, routinely uses a “shotgun” style approach for its information requests by asking for the same “cookie cutter” information (shift reports, staffing

reports, time cards, weekly operating reports, and payroll histories) for every shifter-related grievance without “any attention to whether these documents were actually required to analyze the merits of th[ose] grievances.” ALJ Decision at p. 16-18, 22-25; Tr. at 86, 194, 216, 246, 510, 585. This is readily apparent by the fact that 469 of the 533 initial requests for information that are referenced in the Complaint included the same cookie cutter information, and that 154 of those initial requests have absolutely no identifying information in them that would even allow UPS to attempt to provide an adequate response. ALJ Decision at p. 16; GC Exhibit No. 1.⁴ The Union does this knowing full well that UPS does not maintain records indefinitely or print them “automatically.” Tr. at 96, 580-83. As the ALJ noted, it is clear that the “Union did nothing more than simply add the names of these five documents to the bottom of the grievance form ... [thereby] hinder[ing] the process of obtaining information from [UPS].” ALJ Decision at p. 16.

To justify its practice, the Union maintains that shifter-related grievances require the same types of information every time, yet it readily admits that there is a “wide variety of scenarios under [the] various shift related grievances.” Tr. at 109, 169-70, 194. While a payroll history will provide all the information needed to resolve a shifter-related grievance by indicating whether or not the employee performed shifter-related work on a particular date, the Union claims, however, that the payroll record “doesn’t verify that [the employee] was doing shifting work.” Tr. at 110, 462, 585. In turn, Hughes admits the payroll history identifies a “host of information, some or all of what may be necessary in connecting all the dots . . . in the allegation to determine the presence or absence of a claim.” Tr. at 184. In essence, the Union demands additional supporting documentation of a business record prior to even discovering,

⁴ These boilerplate requests for information can be found in GC Exhibit Nos. 14-28, 30-33, 35-43, 58, 69-109, 111-272, 280-303, 305-19, 321-22, 324-39, 341, 344-45, 349-50, 355-56, 358-74, 379-96, 398, 405-17, 419-20, 427-33, 435-41, 444, 448, 456-62, 465-66, 468, 470-73, 483-535.

much less proving, that there is any inconsistency or error at all or that these documents are necessary. Tr. at 169-70, 178, 194. Such practice results in a significant waste of resources, accumulating documents that may never be used by the Union and that are unnecessary for it to process grievances as evidenced by the following examples:

- In Grievance No. 16659 (Complaint Par. 320), an employee, David Williams, alleged that an inside employee was improperly performing shifting work. Tr. at 473; GC Exhibit No. 320. In conjunction with this grievance, the Union engaged in the same “shotgun” approach to information requests. In response, UPS provided several documents that showed that the inside employee actually performed shifting work on certain dates, thereby, substantiating the grievance. Tr. at 474-75. Nevertheless, Hughes continued to demand the production of shift reports, but later admitted that he did not actually need them. Tr. at 477.
- In Grievance No. 19166 (Complaint Par. 448), an employee, Pamela Buck, alleged that a less senior employee was sent home before she was and requested that her seniority be honored. GC Exhibit No. 448(a). Though Buck was not asserting any pay claim, the Union automatically requested the same cookie cutter information. Id. Hughes admitted, however, that the documents requested were unnecessary based on the facts in the grievance. Tr. at 245.
- In Grievance No. 12410 (Complaint Par. 296), an employee, David Williams, alleged that a feeder driver was improperly performing work. GC Exhibit No. 296(a). Not unlike every other shifter-related grievance, the Union requested the same cookie cutter information. Id. In response, UPS again produced documents that substantiated the grievance. Tr. at 468. Nevertheless, the Union still persisted in

its demand for the remaining items, which contained additional, overbroad, and duplicative information. Tr. at 468, 470. When asked about the reasons for the need for the additional information, Hughes was unable to provide an answer, admitting confusion as to why the grievance could not be resolved at the local level based on the information provided by UPS. Tr. at 470.

2) *The Union requested vague and ambiguous information.*

The Union has repeatedly requested vague and ambiguous information from UPS without any identifying information including the time periods and the individuals or departments involved in the request. It is undisputed that in several instances the Union would request information related to shifter grievances, it would wait months and, at times, a full year before it provided UPS with any detailed information that would explain what it was actually seeking from UPS.⁵ GC Exhibit No. 1. Yet, within days of clarifying each and every initial vague request for information, the Union would constantly demand the production of all records responsive to that request. GC Exhibit Nos. 30-33, 35-69, 286-89, 296-98, 301-02, 318-22, 324-330, 332-39, 349-50, 355-56, 358-74, 379-98, 405-17, 419-20, 427-33, 438-41, 444, 448, 457-62, 465-66, 468, 470-473, 476.

For example, on August 5, 2011, in connection with Grievance No. 18611, the Union requested the same cookie cutter information. GC Exhibit No. 30. While the Union waited months to clarify its request, it demanded the production of records within days of the request. GC Exhibit No. 4(c). The ALJ specifically noted this practice when referencing the allegations

⁵ This tactic is identified in GC Exhibit Nos. 30-33, 35-69, 286-89, 296-98, 301-02, 318-22, 324-330, 332-39, 349-50, 355-56, 358-74, 379-98, 405-17, 419-20, 427-33, 438-41, 444, 448, 457-62, 465-66, 468, 470-473 and 476.

in Complaint paragraphs 286, 287-89, 296-98, 301, 302, and 318-321, and ultimately finding that these allegations lacked merit. ALJ Decision at 24-25.

In some cases, the Union would never clarify its request, but would still constantly demand the production of responsive documents. An example of this behavior can be found in connection with Grievance No. 18882, where the Union requested an “Employee Record (including Attendance Report and Document Talk-Ins) for previous one (1) year.” GC Exhibit No. 376. Despite the fact that the Union failed to provide any identifying information in the request, it repeated this request on April 4, 2012, immediately prior to filing its third unfair labor practice charge, and then again on April 9, 2012. Id. Similarly, on December 14, 2011 - one month before the first charge was filed in January 2012 - the Union demanded the production of ten (10) categories of information without providing UPS any indication as to what the Union was actually seeking.⁶ None of the information was related to any pending grievance. GC Exhibit No. 11. At no time did the Union disclose time periods, employees, departments, shifts, or any other identifying information so that UPS could adequately respond to the request. Id. Instead, the Union demanded these records twice more and somehow expected UPS to sufficiently respond. Id.

3) The Union failed to review documents produced to it.

Since 2008, the Union has repeatedly demanded the production of records without ever determining or acknowledging what documents were already provided to it in response to an

⁶ The Union’s information request sought time cards, payroll histories, shift reports, weekly operation reports, call sheets, staffing reports, employee records, DIAD text messages, DIAD delivery and pick up records and SPARCS Reports, etc.

initial request for information. GC Exhibit No. 1.⁷ In fact, on at least 314 different occasions, the Union repeated the same requests for information, without acknowledging the receipt of any responsive documents. As noted by the ALJ, in several instances the Union's requests had "no correlation to [UPS's] responses," and resulted in needlessly duplicative responses.⁸ ALJ Decision at p. 28.

For example, in connection with Grievance No. 13607, UPS produced virtually all documents responsive to the Union's information request. GC. Ex. 241. Rather than acknowledge the receipt of these documents, the Union simply repeated its request three additional times within approximately a one-month span, forcing UPS to duplicate its responses. As the ALJ noted, this type of conduct demonstrated that the "Union made no attempt to assess or review the information that it received and its interest appeared to be more toward documenting its requests for information than in obtaining the requested information." ALJ Decision at p. 35.

4) The Union requested multiple categories of information when it admitted one is enough.

As discussed above, the Union repeatedly requested multiple categories of unnecessary information without ever determining whether one category was enough. Moreover, it did not limit this practice to information requests for shifter-related grievances. Rather, it extended to other types of grievances, such as supervisor grievances and disciplinary grievances.

In Grievance No. 18901, an employee alleged that On Road Supervisor Amy Snead delivered packages on January 5 by herself in violation of the CBA. GC Exhibit No. 378(a).

⁷ This tactic can be found in GC Exhibit Nos. 74-75, 95-155, 157-284, 286-289, 296-318, 321, 331, 334, 345, 347-348, 353, 355-356, 358-359, 368, 370-373, 379-382, 384-385, 387-393, 395-396, 398, 403, 421-424, 428-429, 431-433, 448, 458, 483-532, 537, and 541.

⁸ Examples of information requests that generated duplicative responses are referenced in GC Exhibit Nos. 110, 241-42, 273-79, 334-36, and 339.

The Union requested six different categories of information. Tr. at 347; GC Exhibit No. 378. According to Hughes, the delivery and pick-up records for Snead alone would have been sufficient because those records identify the actual work performed by the supervisor on that date. Tr. at 349-50. Nevertheless, Hughes claimed, without support or explanation, that he required the five other sets of documents requested. GC Exhibit No. 378.

Additionally, in Grievance No. 10088, an employee alleged that he was improperly sent home for wearing the wrong shoes. GC Exhibit No. 283. Though the grievance was filed on April 3, 2009 and signed by the Union two (2) days later, the Union did not submit an information request to UPS until August 31, 2011.⁹ GC Exhibit No. 283. When it finally did, the Union requested, *inter alia*, the employee's payroll history when UPS declined to give in to the Union and settle the grievance. Tr. at 456. Hughes claimed he requested "the bare minimal documents necessary to honor . . . the grievance" but admitted that the payroll history "[wa]s not relevant to what shoes [the grievant] was wearing." Tr. at 457 (emphasis added). Additionally, Hughes admitted that he was notified that UPS no longer possessed portions of the information requested, but still filed a charge on this information. GC Exhibit No. 283; Tr. at 457-58.

5) The Union initiated large-scale investigations when UPS refused to settle unmeritorious grievances.

The Union also initiated large-scale investigations when there was no justification for doing so. For individual claims, common sense dictates a narrow request for information, if any information is actually needed to resolve the particular grievance. Hughes agrees, stating that "[i]f the situation is an isolated situation where it's a single individual pay claim, it might be as limited as taking a look at a couple of – two or three documents for that one particular week

⁹ In some instances, the Union waited years before submitting initial requests for information. See e.g. GC Exhibit Nos. 481 and 482. This resulted in information not being available when the request was ultimately made. Tr. at 580-83.

ending” and acknowledged that the Union is only able, contractually, to “go back 90 days” to resolve an ongoing pay claim. Tr. at 311-12.

For example, Grievance No. 18252 alleges that an employee was not paid an extra \$1.00 per hour for her Sorter work. Tr. at 313; GC Exhibit No. 348(a). When UPS did not agree to resolve this grievance, Hughes demanded the employee’s pay records for an eight-month period, which is facially overbroad. Tr. at 314-17. Hughes then took it upon himself, despite any foundation in the grievance or any other grievances from similarly situated employees, to propound an overbroad information request on UPS in an attempt to “fix the issue” for all Sorters, even those who had not filed a grievance, by requesting payroll records for three separate classifications of Part-Time employees – information that was not at issue in the above grievance. Tr. at 315-17, 319; GC Exhibit No. 348.

Another example of the Union’s offensive use of information requests relates to GC Exhibit Nos. 536, 537, and 544 – none of which are specifically tied to a grievance as required by Article 47 of the CBA. Tr. at 365, 368, 373. The Union drafted these information requests based on allegations that UPS “owed” the Union more Package Car Driver positions than it had created. Tr. at 361-62, 369. In three separate and evolving requests, the Union demanded: (1) the names of all Temporary Cover Drivers who received 200 or more cover reports in 2011; (2) the Time and Labor Application Reports for each Driver listed; (3) all manner of bid information relating to the thirteen Package Car Driver positions created by UPS; (4) all Temporary Cover Driver quarterly reports within the entire Local Union’s jurisdiction without date limitation; and (5) verification of which Center each Temporary Cover Driver worked in for each report during the first quarter of 2012. GC Exhibit Nos. 536, 537, 544. When asked by Counsel for the General Counsel why the Union “need[ed] so much information,” Hughes responded, “well, in

the greater scheme of things, sir, I really don't think it's too much information." Tr. at 370. Hughes maintained this position even though the information requested was unnecessary to any pending grievance and related to centers other than Whites Creek. Yet, the ALJ held that UPS had an obligation to produce responsive documents to these improper requests. ALJ Decision at pp. 8-9.

ARGUMENT

A. Standard of Review

In reviewing a decision issued by an administrative law judge that an employer engaged in unfair labor practices, the Board engages in a de novo review of the entire record to determine whether the ALJ's rulings, findings, and conclusions are supported by a preponderance of the record evidence. See In re Boddy Const. Co., 338 NLRB 1083, 1083 (2003); Litton Systems, 300 NLRB 324 (1990) (reversing an ALJ's bad faith bargaining determination based upon the entire record evidence).

In evaluating a claim of bad faith bargaining, the Board must look at the "totality of the circumstances" and the overall course of collective bargaining. Hotel Roanoke, 293 NLRB 16 (1989). The Board must ultimately determine whether one party's conduct, as a whole, evidences a sincere desire to bargain collectively with the other side and meets the "spirit of cooperation" that is required by the Act. Port Plastics, 279 NLRB 50 (1986).

Based upon the facts as established at the hearing, the above standards, and the discussion below, the Board must set aside several findings and conclusions made by the ALJ and rule that the Union engaged in bad faith bargaining thereby eliminating any obligation of UPS to respond to the Union's information requests.

B. The ALJ Failed to Find that the Union Engaged in Bad Faith Bargaining, Thereby, Alleviating Any Obligation by UPS to Produce Documents Responsive to the Following Requests for Information:

Date of Request	Complaint paragraph(s)	General Counsel Exhibit(s)	ALJ Opinion Page
7-14-2008	481	481	6
6-5-09	290-294, 533-535	290-294, 533-535	6
9-2-09	495, 530-532	495, 530-532	6
4-7-09	284	284	6
8-26-09	495-498, 530-532	495-498, 530-532	6

11-16-09	95-108, 120, 125, 127, 483-493,499-502, 504-521	95-108, 120, 125, 127, 483-493,499-502, 504-521	6
12-10-09	483	483	6
1-18-10	70-75, 82, 83, 134, 141, 142, 152-155, 163	70-75, 82, 83, 134, 141, 142, 152-155, 163	6
1-22-10	497	497	6
2-22-10	80, 119, 121-124, 128-133, 135-137, 143-149, 151, 156, 158,159, 522-524, 526, 528, 529	80, 119, 121-124, 128-133, 135-137, 143-149, 151, 156, 158,159, 522-524, 526, 528, 529	6
3-4-10	81, 126, 150, 157, 182, 183	81, 126, 150, 157, 182, 183	6
3-30-10	76-79, 84-86, 138, 160, 162, 167, 173-177, 192, 194, 196-197	76-79, 84-86, 138, 160, 162, 167, 173-177, 192, 194, 196-197	6
4-22-10	87-91, 139, 140, 161, 168-172, 178-181, 184-191, 193, 195, 198-214, 217-226	87-91, 139, 140, 161, 168-172, 178-181, 184-191, 193, 195, 198-214, 217-226	6
6-1-10	198-214, 217-226	198-214, 217-226	7
6-29-10	244-248, 250, 252-257, 259, 260, 262, 525	244-248, 250, 252-257, 259, 260, 262, 525	7
7-26-106	109, 111-118, 164-166, 215, 216, 227-240, 249, 251, 258, 261, 263-272, 494	109, 111-118, 164-166, 215, 216, 227-240, 249, 251, 258, 261, 263-272, 494	7
8-4-10	241-243, 527	241-243, 527	7
10-18-107	92-94	92-94	7
11-11-10	305	305	7
12-14-10	295	295	7
12-14-10	280, 282, 299, 300, 303, 306-317	280, 282, 299, 300, 303, 306-317	7
2-24-11	473	473	7
2-27-11	473	473	7
3-30-11	324-327	324-327	7
4-5-11	328-330, 332, 333	328-330, 332, 333	7
5-16-11	336, 537	336, 537	7
5-17-11	338	338	7
6-6-11	12	12	7
6-7-11	12	12	7
6-13-11	15-28, 341	15-28, 341	7
8-1-11	281, 323, 355	281, 323, 355	7
8-5-11	12, 30, 356	12, 30, 356	7
8-9-11	503	503	7
8-12-11	31-33, 35-38, 281, 323	31-33, 35-38, 281, 323	7
8-18-11	13, 281, 323, 503	13, 281, 323, 503	7

8-25-11	39	39	7
8-26-11	40-42	40-42	7
8-29-11	14	14	7
8-31-11	283	283	7
9-2-11	345	345	7
9-5-11	346-48	346-48	7
9-8-11	12	12	7
9-9-11	14	14	7
9-12-11	503	503	7
9-14-11	345	345	7
9-15-11	331, 344	331, 344	7
9-16-11	43, 349-350, 358-360	43, 349-350, 358-360	8
9-20-11	481, 482	481, 482	8
9-22-11	281	281	8
9-25-11	76, 77	76, 77	8
10-7-11	366	366	8
11-7-11	58	58	8
11-18-11	69	69	8
12-1-11	351, 375, 421, 422, 423, 424	351, 375, 421, 422, 423, 424	8
12-2-11	453, 454	453, 454	8
12-5-11	352, 452, 455	352, 452, 455	8
12-14-11	352	352	8
1-7-12	435-437, 456	435-437, 456	8
1-8-12	536	536	8
1-15-12	304, 456, 536, 537, 538	304, 456, 536, 537, 538	8
1-20-12	365, 368, 370-373, 379-398, 401, 427-433, 457, 458	365, 368, 370-373, 379-398, 401, 427-433, 457, 458	8
1-21-12	304, 378, 536, 537	304, 378, 536, 537	8
1-28-12	365, 368, 370-373, 378-385, 387-398, 403, 427-433, 457, 458	365, 368, 370-373, 378-385, 387-398, 403, 427-433, 457, 458	8
1-29-12	450, 451	450, 451	8
2-2-12	378, 403, 536	378, 403, 536	8
2-4-12	347, 349, 405, 406, 448, 482	347, 349, 405, 406, 448, 482	8
2-7-12	437	437	8
2-9-12	462	462	8
2-10-12	365, 370-372, 379-381, 384-393,395, 396, 347, 368, 398, 427-429, 431-433, 450, 451, 457,458, 537-539	365, 370-372, 379-381, 384- 393,395, 396, 347, 368, 398, 427-429, 431-433, 450, 451, 457,458, 537-539	8
2-13-12	415, 440, 441	415, 440, 441	8
2-17-12	540	540	8
2-20-12	414, 417, 419	414, 417, 419	8
2-24-12	416, 420, 540, 541, 473	416, 420, 540, 541, 473	8

2-27-12	407-417, 419-420, 438-441, 459-462, 465, 466	407-417, 419-420, 438-441, 459-462, 465, 466	8
3-4-12	347, 407-417, 419, 420, 438-440, 459-462, 465, 466, 473, 481, 503, 539-542	347, 407-417, 419, 420, 438-440, 459-462, 465, 466, 473, 481, 503, 539-542	8
3-5-12	281	281	8
3-7-12	353	353	8
3-8-12	444, 468, 541	444, 468, 541	8
3-9-12	474	474	9
3-11-12	286-287, 301, 302, 322, 324-330, 332-333, 336-338	286-287, 301, 302, 322, 324-330, 332-333, 336-338	9
3-12-12	320, 335	320, 335	9
3-14-12	286-287, 301, 302, 322-330, 332, 333, 335-339	286-287, 301, 302, 322-330, 332, 333, 335-339	9
3-15-12	319, 334	319, 334	9
3-16-12	283, 346, 348, 478, 347, 441	283, 346, 348, 478, 347, 441	9
3-20-12	418, 442, 443, 464, 543	418, 442, 443, 464, 543	9
3-21-12	283, 346, 348, 403, 428, 542	283, 346, 348, 403, 428, 542	9
3-23-12	418, 442, 443, 464, 542, 543	418, 442, 443, 464, 542, 543	9
3-27-12	283, 286, 301, 348, 440	283, 286, 301, 348, 440	9
3-29-12	284, 285, 290-294, 377, 400, 402, 425, 426, 463, 476-479, 497, 498, 533-535, 543	284, 285, 290-294, 377, 400, 402, 425, 426, 463, 476-479, 497, 498, 533-535, 543	9
4-4-12	284, 285, 290-294, 376, 377, 399, 400, 402, 425, 426, 463, 476-479, 496-498, 533-535, 544	284, 285, 290-294, 376, 377, 399, 400, 402, 425, 426, 463, 476-479, 496-498, 533-535, 544	9
4-9-12	376, 377, 399, 400, 402, 425, 426, 463, 476-479, 498, 544	376, 377, 399, 400, 402, 425, 426, 463, 476-479, 498, 544	9

It is well settled that a union engages in an unfair labor practice when it “refuse(s) to bargain collectively with an employer.” See 29 U.S.C. § 158(b). A union fails to bargain collectively when it does not “confer in good faith with respect to wages, hours, and other terms and conditions of employment....” Id. Good faith bargaining is a reciprocal requirement whereby both sides must engage each other in an honest manner. See NLRB v. Truitt Manufacturing, 351 U. S. 149, 152-53 (1956) (emphasis supplied).

It is universally understood that to meet the requirements of the Act the parties must “enter into discussion with an open and fair mind and a sincere purpose to find a basis of agreement.” See NLRB v. Herman Sausage Co., 275 F.2d 229, 231 (5th Cir. 1960). “Sham discussions in which unsubstantiated reasons are substituted for a genuine argument” can be considered evidence of bad faith.” See NLRB v. General Electric Company, 418 F.2d 736 (2d Cir. 1969). Ultimately, an employer is not obligated to provide information merely because the Union requests it. See NLRB v. Truitt Mfg., 351 US 149, 153-54 (1956). The Board must first determine whether the Union’s statutory obligation to bargain in good faith has been met. Id.

Where a union takes an all-or-nothing approach to its information requests, as the Union did in the present matter, such acts “cast[] doubt on the union's good faith need or desire for the information.” See Columbus Maintenance Co., 269 NLRB 198, 203 (1984); Int’l Brotherhood of Teamsters, Local Union 373 v. United Parcel Service, Inc., JD(ATL)-21-12 (ALJ Locke, August 15, 2013) (“where agreeing to an appropriate accommodation would cause no harm, the refusal to narrow the request by eliminating redundant documents, or even to explain why all are needed, is evidence of a vindictive objective”). This type of union approach has been rejected time and again as improper and not in the spirit of the Act.

In NLRB v. Wachter Const., Inc., 23 F.3d 1378, 1385 (8th Cir 1994), the union requested information from the employer regarding hundreds of the employer’s subcontractors. The Eighth Circuit found that the union, through the information request process, attempted to “overburden” the employer and that serving “voluminous requests for information on any ‘boilerplate’ type of asserted good faith rationale will wreak havoc on the negotiation process.” Id. at 1386. The Eighth Circuit also found that the union’s “predominant motivation in making its information request” was inconsistent with its duty to police the contract because it attempted

to force the employer to make concessions on subcontracting work. Id. at 1386. Based upon the union's underlying motivation, the Court held that it engaged in bad faith bargaining, alleviating the employer's obligation to respond to information requests. Id.

Similarly, in Int'l Brotherhood of Teamsters, Local Union 373 v. United Parcel Service, Inc., the union repeatedly submitted voluminous, overly broad, and duplicative requests for information and refused to narrow any of these requests. JD(ATL)-21-12, at p. 20-21. The ALJ found that, *inter alia*, the union's "unwillingness to exclude irrelevant and redundant documents [did] not shout of 'good faith.'" Id. at 21. In that case, the ALJ also found that through the information request process, the union intended to overburden and inconvenience management with requests in order to harm UPS's operations, which was "malicious," "antithetical to the purposes of the Act," and destructive to the collective bargaining process. Id. at 22. Therefore, the ALJ concluded that the "improper purpose [of the requests] although not the only motive, so dominated the [union's] actions that the legitimate objective became increasingly less significant." Id. at 23. The ALJ explained:

[Thomas'] insistence that Respondent furnish documents he did not need for grievance processing demonstrates that the objective of inflicting inconvenience on [UPS] had become more important. The intent to burden supervisors with time-consuming tasks of gathering, copying and furnishing massive amounts of documents gave Thomas' bad faith an egregious quality, and this motivation had become the dominant one. Nonetheless, Respondent made a good-faith effort to comply with the information request. In these circumstance, any omission by the Respondent neither manifested bad faith nor violated the Act.

...[Using] the information request process as a weapon of retaliation greatly damages bargaining relationships and undermines the system Congress envisioned. That system fails when rational self-interest get trampled by the brooding beasts of spite. It should be stressed that the mere presence of hostile feeling does not signal that the information request process has been converted from plowshare into a sword wielded with malice.

Rather, such a rare kind of change will manifest a constellation of additional symptoms including these: (1) the information request or requests will require the production of a vast number of documents; (2) furnishing them will be time-consuming and onerous; (3) because of overlap and redundancy, all relevant and necessary information can be obtained from a subset of the records sought; (4) the requesting party is unwilling to agree to any accommodation which would reduce the burden even if the compromise would still provide all relevant and necessary information; (5) the requesting party is unwilling or unable to offer a plausible explanation as to why every single document is necessary.... By itself, a party's unwillingness to make a particular compromise does not suggest that the party is acting in bad faith, but an unwillingness to make any compromise at all over a long period of time certainly does.... [A]ppropriating a mechanism designed to promote informed bargaining and changing it into an engine of retaliation is malignant. Such cancerous mutation poses too much danger to be condoned.

(emphasis added).

This matter is similar, and in many respects identical, to Wachter Const., Inc. and IBT Local 373. Here, the Union has engaged in a pattern of requesting voluminous records, refused to compromise an inch on any of its requests, forced UPS to expend thousands of hours responding to requests, failed to give any explanation as to why it needs every single document requested over a four (4) year period, and, through the information request process, forced concessions on bargaining unit issues, such as the shifter grievances, that the Union failed to previously obtain.

Despite repeatedly questioning the Union's underlying motivations in requesting information and going so far as finding that the Union had "a disinterest in genuine communication with UPS," the ALJ failed to take the next logical step which was made in the decisions cited above and conclude, based upon the totality of the record evidence, that the Union's information requests were submitted in bad faith. ALJ Decision at p. 34. The ALJ should have reached the same conclusions as in Wachter Const., Inc. and IBT Local 373.

The totality of the record evidence demonstrates that the Union repeatedly requested information in order to harass and manipulate UPS to gain concessions the Union did not obtain in the 2010 Settlement Agreement. It has done so by undermining the efficacy of the information request process and creating an insurmountable hurdle for UPS to adequately and appropriately respond to requests. In fact, Hughes’s motivation, as he stated during the August 2012 hearing, is crystal clear:

“[t]here would be a host of documents that we wouldn’t have to require if the Company is willing to tell us what actually happened *and agree with us*. But when we don’t agree, we have to look.”

Tr. at 59, 243 (emphasis added). In Hughes’s own words: “all is fair in love and war.” Tr. at 247. To him, the Union is at war with UPS and any tactic, despite whether it violates the spirit of the NLRA, is fair game.

In some respects, the Union’s conduct here is worse than the conduct in Wachter Const., Inc. or in IBT Local 373. By flooding UPS with thousands of information requests over a four (4) year period, including submitting 277 separate information requests in a single day and over 800 in a 90 day period (*see supra*, fn. 4), demanding the production of documents that are unnecessary for grievance processing, and refusing to narrow its requests,¹⁰ the Union’s bad faith

¹⁰ Courts have consistently held that the “take it or leave it” approach to requesting information is an indicia of bad faith. See East Tennessee Baptist Hosp. v. NLRB, 6 F.3d 1139, 1145 (6th Cir. 1993) (holding that employer’s counter-proposals for producing information were facially reasonable and must be addressed prior to a finding by the Board that the employer allegedly refused to bargain); Soule Glass & Glazing Co. v. NLRB, 652 F.2d 1055, 1098 (1st Cir. 1981), *abrogated* on other grounds by 494 U.S. 775 (1990) (“[w]hen the employer presents a legitimate, good faith objection ... [to an information request], and offers to cooperate with the union in reaching a mutually acceptable accommodation, it is incumbent on the union to attempt to reach some type of compromise with the employer as to the form, **extent**, or timing of disclosure”) (emphasis supplied); Exxon Chemical Americas and Exxon Corp., 2000 WL 33664332 (ALJ Carson II, July 27, 2000) (noting that unreasonable bargaining demands can be an indicia of bad faith bargaining); NLRB v. St. Joseph’s Hospital, 755 F.2d 260, 265 (2d Cir. 1985)

motive is beyond true dispute. To expect UPS - or for that matter any entity - to respond to such voluminous requests for information is unreasonable and frankly disingenuous. As the ALJ found: “by inundating [UPS] with multiple and duplicative requests for information, the Union was able to essentially paralyze [UPS’s] ability to adequately respond to such an inordinate number of multiple requests.” ALJ Decision at p. 33. Such a determination by the ALJ is sufficient to relieve UPS of responding to the Union’s numerous bad faith information requests.

This conduct alone demonstrates the Union’s bad faith intent. However, there were a number of additional bad faith tactics used by the Union that had the intended effect of impeding, delaying, and preventing UPS from responding to information requests, including: (1) routinely using a “shotgun” style approach to information requests without “any attention to whether these documents were actually required to analyze the merits of the grievance;” (2) demanding vague and ambiguous information only to clarify those requests months or a year later; (3) duplicating requests without ever determining or acknowledging information provided; and (4) initiating large scale investigation without any justification. *See supra*, Statement of Facts §E(1)-(6). All of these tactics were recognized by the ALJ and caused her to repeatedly question the Union’s true underlying motivation. ALJ Decision at pp. 16, 21, 22-34.

Indeed, during the hearing on this matter, when Hughes was asked to explain why he sent duplicative requests and waited months to request information, his response boiled down to two things: (1) he is busy, and (2) there was an “overwhelming volume” of documents. Tr. at 357-60, 466. As a result, UPS was required to devote a significant amount of resources in its attempt to keep up with these requests. Tr. at 500-01. The Union, however, did not reasonably reciprocate. Instead, it admits that it: (1) failed to make individualized determinations regarding

(“stonewalling” by a union should not be rewarded through an enforcement action against the employer).

its need for information; (2) had no intention of even using the information UPS provided; and (3) simply stored information in its server after the information was provided to it. Tr. at 58, 86, 109-10, 151, 194, 245-46, 281, 335, 430-32, 450, 464-66. In 2009, after collecting approximately 102 information requests to which the Union claimed UPS had not responded, the Union filed Charge No. 26-CA-23572, alleging UPS failed to provide information or delayed in providing information. Tr. at 64-67. The Union used the charge to pressure UPS to make large concessions on bargaining issues, including rescinding discipline of union members, reinstating union members to their jobs, paying tens of thousands of dollars in back pay, and creating new bargaining unit jobs for shifters and sorters. See Appendix “A”.

The additional Charges, Nos. 26-CA-076655, 26-CA-072915, and 26-CA-078241 at issue in the present case, are more attempts by the Union to gain concessions from UPS that the Union failed to obtain in 2010.¹¹ Tr. at 229. In fact, the Union admits that 90% of the information requested relates to shifters. See GC Exhibit No. 6. As it did in 2009, the Union has now hoarded hundreds of information requests to which it claims UPS has not responded or delayed in providing information. Tr. at 429-30, 502-03, 605-06. Like before, the Union has abused the information request process by automatically requesting, in every instance, categories of documents it may not ever need and having no real intention of using the information. Tr. at 508-10.

Additionally, the ALJ’s reliance upon Island Creek Coal Co., 292 NLRB 480, 489 (1989), for the proposition that “if a union’s only reason for making its requests was for harassment the employer would not be required to comply with the request,” fails to account for

¹¹ The Union has also filed additional charges (Charge Nos. 26-CA-072915 and 26-CA-075165 (withdrawn)) and a lawsuit in federal court that has been dismissed (Teamsters Local Union 480 vs. United Parcel Service, Inc., 3:12-cv-00178) to attempt to pressure UPS to make concessions regarding the use of shifters.

the fact that the Union’s predominant motivation was to harass UPS and frustrate the information request process. In Wachter Const., Inc., the Eighth Circuit reasoned:

The NLRB has created a good faith distinction which finds no support in the Act.... A major purpose of the labor laws is to promote peaceful resolution of labor disputes, and it furthers that purpose to permit unions to have access to information needed to investigate alleged violations.... Since the Act holds all parties to the same standard, we find there is no compelling reason to follow the Board's approach to this case and to ignore the predominant purpose of the union when it is forcing an end not permitted in the collective bargaining agreement.”

By recognizing these multiple disingenuous tactics but then failing to hold that the Union engaged in bad faith bargaining, the ALJ has sanctioned the Union’s tactics in manipulating the information request process to achieve concessions that the Union failed to obtain through the collective bargaining process. The ALJ’s failure should be overturned.

C. The ALJ Failed to Find that UPS was Justified in not Producing Documents Responsive to the Following Voluminous, Overly Broad, Duplicative, and Unduly Burdensome Information Requests:

Date of Request	Complaint paragraph(s)	General Counsel Exhibit(s)	ALJ Opinion Page
6-5-09	290-294, 533-535	290-294, 533-535	6
9-2-09	495, 530-532	495, 530-532	6
4-7-09	284	284	6
8-26-09	495-498, 530-532	495-498, 530-532	6
11-16-09	95-108, 120, 125, 127, 483-493, 499-502, 504-521	95-108, 120, 125, 127, 483-493, 499-502, 504-521	6
12-10-09	483	483	6
1-18-10	70-75, 82, 83, 134, 141, 142, 152-155, 163	70-75, 82, 83, 134, 141, 142, 152-155, 163	6
1-22-10	497	497	6
2-22-10	80, 119, 121-124, 128-133, 135-137, 143-149, 151, 156, 158, 159, 522-524, 526, 528, 529	80, 119, 121-124, 128-133, 135-137, 143-149, 151, 156, 158, 159, 522-524, 526, 528, 529	6
3-4-10	81, 126, 150, 157, 182, 183	81, 126, 150, 157, 182, 183	6

3-30-10	76-79, 84-86, 138, 160, 162, 167, 173-177, 192, 194, 196-197	76-79, 84-86, 138, 160, 162, 167, 173-177, 192, 194, 196-197	6
4-22-10	87-91, 139, 140, 161, 168-172, 178-181, 184-191, 193, 195, 198-214, 217-226	87-91, 139, 140, 161, 168-172, 178-181, 184-191, 193, 195, 198-214, 217-226	6
6-1-10	198-214, 217-226	198-214, 217-226	7
6-29-10	244-248, 250, 252-257, 259, 260, 262, 525	244-248, 250, 252-257, 259, 260, 262, 525	7
7-26-106	109, 111-118, 164-166, 215, 216, 227-240, 249, 251, 258, 261, 263-272, 494	109, 111-118, 164-166, 215, 216, 227-240, 249, 251, 258, 261, 263-272, 494	7
8-4-10	241-243, 527	241-243, 527	7
10-18-107	92-94	92-94	7
11-11-10	305	305	7
12-14-10	295	295	7
12-14-10	280, 282, 299, 300, 303	280, 282, 299, 300, 303	7
2-24-11	473	473	7
2-27-11	473	473	7
3-30-11	324-327	324-327	7
4-5-11	328-330, 332, 333	328-330, 332, 333	7
5-16-11	336	336	7
5-17-11	338	338	7
6-13-11	15-28, 341	15-28, 341	7
8-1-11	281, 355	281, 355	7
8-5-11	30, 356	30, 356	7
8-9-11	503	503	7
8-12-11	31-33, 35-38, 281	31-33, 35-38, 281	7
8-18-11	281, 503	281, 503	7
8-25-11	39	39	7
8-26-11	40-42	40-42	7
8-29-11	14	14	7
8-31-11	283	283	7
9-2-11	345	345	7
9-9-11	14	14	7
9-12-11	503	503	7
9-14-11	345	345	7
9-15-11	331, 344	331, 344	7
9-16-11	43, 349-350, 358-360	43, 349-350, 358-360	8
9-22-11	281	281	8

9-25-11	76, 77	76, 77	8
10-7-11	366	366	8
11-7-11	58	58	8
11-18-11	69	69	8
1-7-12	435-437, 456	435-437, 456	8
1-15-12	456	456	8
1-20-12	365, 368, 370-373, 379-398, 427-433, 457, 458	365, 368, 370-373, 379- 398, 427-433, 457, 458	8
1-28-12	365, 368, 370-373, 379-385, 387-396, 398, 427-433, 457, 458	365, 368, 370-373, 379- 385, 387-396, 398, 427- 433, 457, 458	8
2-4-12	349, 405, 406, 448	349, 405, 406, 448	8
2-7-12	437	437	8
2-9-12	462	462	8
2-10-12	365, 368, 370-372, 379-381, 384-393,395, 396, 398, 427- 429, 431-433, 457,458	365, 368, 370-372, 379- 381, 384-393,395, 396, 398, 427-429, 431-433, 457,458	8
2-13-12	415, 440, 441	415, 440, 441	8
2-20-12	414, 417, 419	414, 417, 419	8
2-24-12	416, 420, 473	416, 420, 473	8
2-27-12	407-417, 419-420, 438-441, 459-462, 465, 466	407-417, 419-420, 438- 441, 459-462, 465, 466	8
3-4-12	407-417, 419, 420, 438- 440, 459-462, 465, 466, 473, 503	407-417, 419, 420, 438- 440, 459-462, 465, 466, 473, 503	8
3-5-12	281	281	8
3-8-12	444, 468	444, 468	8
3-11-12	286-287, 301, 302, 322, 324- 330, 332-333, 336-338	286-287, 301, 302, 322, 324-330, 332-333, 336-338	9
3-12-12	320, 335	320, 335	9
3-14-12	286-287, 301, 302, 322-330, 332, 333, 335-339	286-287, 301, 302, 322-330, 332, 333, 335-339	9
3-15-12	319, 334	319, 334	9
3-16-12	283, 441	283, 441	9
3-21-12	283, 428	283, 428	9
3-27-12	283, 286, 301, 440	283, 286, 301, 440	9
3-29-12	284, 285, 290-294, 497, 498, 533-535	284, 285, 290-294, 377, 400, 402, 497, 498, 533- 535	9

4-4-12	284, 285, 290-294, 496-498, 533-535	284, 285, 290-294, 496-498, 533-535	9
4-9-12	498	498	9

The ALJ incorrectly held that UPS had an obligation to respond to overly broad, duplicative, and unduly burdensome information requests. ALJ Decision at pp. 6-11. It is well settled that an employer is “not necessarily responsible for all of the requested information” even if there is no bad faith in the request. See Wachter Const., Inc., 23 F.3d at 1388; East Tenn. Baptist Hosp. v. NLRB, 6 F.3d 1139, 1144 (6th Cir. 1993) (employer’s refusal to turn over wage and attendance information requested by union in form and manner demanded by union was not failure to bargain in violation of the Act). For instance, if the information is “objectively relevant . . . a union’s request may [still] be denied if its compilation would be unduly burdensome.” See Safeway Stores, Inc. v. NLRB, 691 F.2d 953, 956 (10th Cir. 1982). This is why each grievance “must turn on its particular facts” and a union’s claim of “[r]elevance cannot be established by speculative argument alone” See Wachter, 23 F.3d at 1389; Grinnell Fire Production System Co. v. NLRB, 272 F.3d 1028, 1029 (8th Cir. 2001) (refusing to find that an employer engaged in an unfair labor practice where the information requested has “dubious relevance” to the bargaining unit). For that reason, “a union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested.” See Pennsylvania Power Co., 301 NLRB 1104, 1105 (1991).

A request must at least be “reasonably necessary” for the union's function as the employees’ statutory representative. See U.S. Postal Service, 307 NLRB 429, 432 (1992). In fact, the Board has refused to enforce an order finding that an employer committed an unfair labor practice “[w]here, [like here] the union has sought considerably more information than is

required for or is relevant to its collective bargaining purposes . . .” See Kroger Co. v. NLRB, 399 F.2d 455, 459 (6th Cir. 1968).

Hughes is well aware that it is unnecessary to review several different categories of documents when one is enough and it is unreasonable to do so. Tr. at 462, 508-12, 584 (admitting that determining whether an individual worked outside his/her classification could be obtained from payroll records alone). Yet, for the past several years, Hughes has - prior to any analysis of the situation - submitted multi-part information requests without determining their necessity or relevance to grievances. Tr. at 169-70, 178, 194. There are several instances cited in Point E(i) of the Brief where Hughes admits to the inadequacy of requesting vague, boilerplate and cookie cutter information.

The ALJ put it best:

“The overall record, including the testimony of Hughes, reflects that the Union routinely requested the same category of documents if the grievance related in any way to employees performing shifter work, without any apparent attention to whether these documents were actually required to analyze the merits of the grievance.... The record demonstrates that the Union’s use of these standard requests, in conjunction with the timing of its multiple requests, has also hindered the process of obtaining information from the Respondent.” ALJ Decision at p. 17.

Hughes candidly admits that the process of responding to his requests is “very burdensome” because UPS has “different operations, different areas and departments,” and it has “different record keeping devices that keep track of time or times of work performed and things of this nature.” Tr. at 92, 404. This is exactly why it is so important for the Union to determine, in advance of submitting a request, what records it truly needs for a particular grievance and to narrow its requests accordingly. Yet, for the past four (4) years, Hughes has refused to do so and now disingenuously claims that he does not know how. Id.

D. The ALJ Failed to Find that UPS Acted in Good Faith by Attempting to Respond to the Union’s Voluminous, Overly Broad and Unduly Burdensome Information Requests by Producing Thousands of Documents, and that UPS Did Not Unlawfully Delay in Providing Responsive Information to the Following Requests:

Dates of Alleged Delay	Complaint paragraph(s)	General Counsel Exhibit(s)	ALJ Opinion Page
6-5-09 to 4-18-12	535	535	9
8-26-09 to 1-22-10	496-498	496-498	9
8-26-09 to 2-29-12	495, 530, 531	495, 530, 531	9
8-26-09 to 4-17-12	530, 531	530, 531	9
8-26-09 to 4-18-12	495	495	9
8-29-09 to 2-29-12	532	532	
8-29-09 to 4-17-12	532	532	9
11-16-09 to 1-22-10	494, 500, 501, 504-514	494, 500, 501, 504-514	9
11-16-09 to 1-7-11	512-514, 518	512-514, 518	9
11-16-09 to 2-20-12	97, 98	97, 98	9
11-16-09 to 3-18-11	99	99	9
11-16-09 to 2-20-12	99-108	99-108	9
11-16-09 to 10-17-10	127	127	9
11-16-09 to 10-29-10	483	483	10
1-18-10 to 3-18-11	152	152	10
1-18-10 to 2-29-12	70-72	70-72	10
1-18-10 to 3-18-11	73-75, 134, 141, 142, 153-155, 163	73-75, 134, 141, 142, 153-155, 163	10
1-18-10 to 2-29-12	73, 82, 83	73, 82, 83	10
2-22-10 to 3-18-11	121-124, 128-133, 135-137, 143-149, 151, 158, 159	121-124, 128-133, 135-137, 143-149, 151, 158, 159	10
2-22-10 to 2-20-12	80	80	10
3-4-10 to 2-29-12	81	81	10
3-4-10 to 3-18-11	126, 150, 157, 182, 183	126, 150, 157, 182, 183	10
3-30-10 to 2-20-12	76, 77, 78, 79, 84-86	76, 77, 78, 79, 84-86	10
3-30-10 to 3-18-11	138, 160, 162, 167, 173-177, 194, 196, 197	138, 160, 162, 167, 173-177, 194, 196, 197	10
4-22-10 to 2-20-12	87	87	10
4-22-10 to 3-18-11	88, 139, 140, 161, 168-172, 178-181, 184-189	88, 139, 140, 161, 168-172, 178-181, 184-189	10
4-22-10 to 2-29-12	89, 90, 91	89, 90, 91	10
4-22-10 to 3-18-11	190, 191, 195, 198-214, 217-226	190, 191, 195, 198-214, 217-226	10

6-1-10 to 3-18-11	244-247, 250, 252-257, 259, 260, 262	244-247, 250, 252-257, 259, 260, 262	10
6-29-10 to 3-18-11	109, 215, 216, 228-237, 248, 249, 258, 261, 265-272, 494	109, 215, 216, 228-237, 248, 249, 258, 261, 265-272, 494	10
6-29-10 to 12-14-11	109, 111-118, 164, 166, 215, 216, 227, 234-237, 239, 248, 249, 251, 258, 261, 263-272, 494	109, 111-118, 164, 166, 215, 216, 227, 234-237, 239, 248, 249, 251, 258, 261, 263-272, 494	10
6-29-10 to 12-15-11	165	165	10
6-29-10 to 12-11-11	228-233	228-233	10
8-4-10 to 2-29-12	92-94	92-94	10
6-13-11 to 2-7-12 and 2-25-12	15-28	15-28	10
6-13-11 to 12-14-11	341	341	10
8-30-11 to 11-10-11	340	340	10
8-31-11 to 3-16-12	283	283	10
9-5-11 to 4-12-12	348	348	11
9-5-11 to 3-6-12	347	347	11
9-5-11 to 4-14-12	346	346	11
9-15-11 to 2-7-12	344	344	11
10-6-11 to 2-7-12 and 2-8-12	349	349	11
10-6-11 to 2-1-12	350	350	11
12-20-11 to 4-10-12	361	361	11
12-20-11 to 3-8-12	362, 367, 471	362, 367, 471	11
12-20-11 to 3-8-12	470	470	11
12-20-11 to 3-9-12	363, 364, 369, 374, 472	363, 364, 369, 374, 472	11
12-20-11 to 3-27-12	469	469	11
12-21-11 to 3-27-11	468	468	11

Despite the fact that UPS has no legal obligation to respond to information requests submitted in bad faith or information requests that are overly broad and unduly burdensome, UPS has provided responsive documents for the information requests that are the subject of the pending charges. Tr. at 581. It is undisputed that UPS' managers and supervisors have devoted hundreds of hours over numerous days to researching, compiling, printing, copying, and scanning thousands of documents for production to the Union, most of which are completely irrelevant to any pending grievance and/or are duplicative of previous information requests. Tr.

at 428, 500, 575-80, 581, 589; GC Exhibit Nos. 10-11, 14, 29-69, 110, 238, 240-242, 273-279, 283, 286-289, 296-298, 301-302, 304, 318-321, 334-336, 339, 342-343, 345, 353-356, 360-363, 366-370, 373, 375, 378, 391-394, 397, 403, 426, 428-429, 433-436, 444-446, 447-48, 455, 466-71, 474, 479. As the ALJ noted, UPS has “repeatedly attempted to respond to the myriad of information requests that are in issue.” ALJ Decision at p.18.

Even assuming, *arguendo*, that UPS failed to produce necessary and relevant information, the Union has not been prejudiced by any alleged delay because the at-issue grievances are still pending and UPS has complied with the parties long-standing past practice of providing information at a local level hearing. Tr. at 430, 503-04, 515. The Union’s insistence that documents be provided prior to a hearing is inconsistent with this practice and further evidence of its refusal to bargain in good faith with UPS. By its own doing, the Union has created a backlog of thousands of grievances that have yet to be heard locally.

E. The ALJ Incorrectly Concluded that No Remedy Could Be Issued for the “Timing, Duplicity of Requests, and the Overly Broad Nature of Many of [the Union’s] Requests.”

The ALJ incorrectly concluded that a remedy could not be issued to address the Union’s egregious conduct in submitting information requests in bad faith. Courts and the Board have consistently held that there are remedies available to an employer where there is legitimate doubt as to a union’s motivation in submitting information requests. For example, an employer’s duty to respond to information requests is terminated when there is evidence of bad faith bargaining. See Wachter, 23 F.3d at 1378. The same is true for an employer’s duty to provide timely information. See ACF Industries, LLC, 347 NLRB 1040, 1043 (2006).

In IBT Local Union 373, the ALJ found that the union attempted to “hijack” the information request process with the intent to “cause management such extra work and

inconvenience that it foreseeably would do harm to the Respondent's operations." JD(ATL)-21-12 at p. 22. Based on this finding, the ALJ concluded as follows:

“[i]n this regard, the retaliatory motive affected not only the decision to file the information requests and the content of those requests, but also the Union's willingness to engage in the discussion process, the give and take, which forms the essence of collective bargaining relationship. In these circumstances ... Thomas' retaliatory motive cannot simply be ignored or held to be of no consequence. To do so would condone the misuse of the information request process and set highly pernicious precedent.”

It is undisputed that the ALJ similarly found that the Union here did not have a good faith basis to request information and that the timing, duplicity of requests, and the overly broad nature of them called into question the Union's need for the information. ALJ Decision at pp. 25-26. Yet, unlike in IBT Local 373, the ALJ concluded that it was up to the parties to work out their differences and directed UPS to respond to thousands of overly broad, duplicative, and unduly burdensome information requests. Id. By allowing the Union to continue to inundate and paralyze UPS with information requests that serve no other purpose but to harass UPS and compel it to concede on bargaining issues, the ALJ has legitimized the practice and has completely ignored her own findings of improper motives by the Union.

CONCLUSION

The ALJ's findings and conclusions must be reversed and the Complaint dismissed. The totality of the evidence demonstrates that the Union utilized the information request process in bad faith, that UPS attempted, in good faith, to comply with hundreds of overly broad, duplicative, and unduly burdensome information requests, and that the unfair labor practice charges filed were untimely.

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