

**IronTiger Logistics, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO.** Case 16-CA-027543

October 23, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES  
AND BLOCK

On May 6, 2011, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel filed an answering brief,<sup>1</sup> 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, and conclusions and to adopt the recommended Order. For the reasons set out by the judge, as further explained below, we agree that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to timely respond in any manner to the Union's request for presumptively relevant information relating to the Respondent's employees.

I. FACTUAL BACKGROUND

This case stems from a dispute about the apportioning of freight delivery assignments between the Respondent and TruckMovers.com, Inc. (TruckMovers). Both employers are engaged in the interstate delivery of freight and share common ownership.<sup>2</sup> The Union represents the Respondent's drivers but does not represent TruckMovers' drivers.

TruckMovers assigns the loads for delivery to both groups of drivers. Before the events at issue, the Respondent and the Union entered into a Letter of Agreement clarifying that loads assigned to TruckMovers' drivers were not the Respondent's and that their delivery by TruckMovers would not be considered subcontracting.

On March 16, 2010,<sup>3</sup> the Union alleged that the Respondent was not complying with the dispatch provisions in the parties' collective-bargaining agreement. On March 29, the Union filed a grievance concerning the

<sup>1</sup> The Acting General Counsel urges us to disregard the Respondent's exceptions because they were "procedurally defective." We decline to do so. We find the Respondent's exceptions substantially comport with the requirements of Sec. 102.46(b)(1) and (c) of the Board's Rules and Regulations, and accept them. See, e.g., *Wal-Mart Stores, Inc.*, 351 NLRB 130 fn. 3 (2007).

<sup>2</sup> There is no allegation that the two companies constitute alter egos or a single employer.

<sup>3</sup> All dates are in 2010, unless otherwise indicated.

dispatch of loads to TruckMovers' drivers, contending that the Respondent was not placing all available loads on its dispatch board. On April 12, the Union requested information concerning all units of work dispatched to both the Respondent's and TruckMovers' drivers over the preceding 6 months. The Respondent provided a list of units dispatched to both employers' drivers.

On May 11, the Union requested supplemental information. Items (a) through (g) of the Union's supplemental request concerned TruckMovers' drivers. Items (h) through (j) requested information about the Respondent's drivers, including the names of the Respondent's drivers for each unit, their destination and mileage, and all relevant communication from customers about those units. The Respondent did not immediately provide the Union with any of that information. In fact, some 4-1/2 months would pass before the Respondent even acknowledged the Union's May 11 request, as described below.

In the meantime, on July 15, the Union filed an unfair labor practice charge, triggering the Board Region's investigative machinery and ultimately resulting in the complaint underlying this case. On July 30, the Union repeated its May 11 request for supplementary information, but again the Respondent provided no response.

The Respondent finally responded to the Union's May 11 information request on September 27. The Respondent did not provide any of the requested information. Rather, it asserted that loads not appearing on the Respondent's dispatch board were not the Respondent's drivers' loads pursuant to the Letter of Agreement, that information about TruckMovers involved nonunit employees and was irrelevant, and that the Union needed to substantiate the relevance of the information concerning the Respondent's drivers' loads because that work had already been performed by the Respondent's drivers. The Respondent also alleged that the Union's information request was generally "harassment, burdensome, and irrelevant."<sup>4</sup>

II. THE JUDGE'S DECISION

The judge found that the Union's May 11 information request concerning the units dispatched to the Respondent's drivers was presumptively relevant because it involved unit employees, and, therefore, "[t]he Respondent herein was obligated to inform the Union in a timely manner of the reasons that it did not believe that the in-

<sup>4</sup> The information sought by the Union's May 11 request was not related to any pending grievance. Shortly before the hearing in this case, the Union confirmed that the Respondent had sufficiently responded to that information request, narrowing the question before the judge to the lawfulness of the Respondent's 4-1/2-month delay in providing that response.

formation sought was relevant.”<sup>5</sup> Because the Respondent waited more than 4-1/2 months to do this, the judge found that the Respondent had not met its obligations under Section 8(a)(5) and (1) of the Act, despite the judge’s related finding that all the supplementary information requested by the Union was ultimately irrelevant and, therefore, did not need to be provided by the Respondent.<sup>6</sup> The judge quoted an earlier Board decision for the proposition that

[A]n employer must respond to a union’s request for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance within a reasonable period of time. Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act. Some kind of response or reaction is mandatory.

*Columbia University*, 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal*, 232 NLRB 109 (1977).

We agree with the judge’s finding for the reasons he gives and those discussed below.

### III. DISCUSSION

Under Section 8(a)(5) of the Act, which imposes the duty to bargain in good faith, a unionized employer must provide, on request, information that is relevant and necessary to the union’s performance of its duties as collective-bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). It must do so in a reasonably timely manner. E.g., *Woodland Clinic*, 331 NLRB 735, 736 (2000) (“An unreasonable delay in furnishing [requested relevant] information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all.”). Under a well-established corollary to that requirement, an employer must timely respond to a union request seeking relevant information even when the employer believes it has grounds for not providing the information.<sup>7</sup>

<sup>5</sup> The judge found that the Union’s information request concerning TruckMovers’ drivers was not presumptively relevant because it involved nonunit employees. No party excepted to this finding.

<sup>6</sup> No party excepted to the judge’s ultimate finding of irrelevance.

<sup>7</sup> See, e.g., *A-1 Door & Building Solutions*, 356 NLRB 499, 501 (2011) (employer with legitimate confidentiality defense to disclosure has affirmative duty to respond and seek accommodation); *Superior Protection, Inc.*, 341 NLRB 267, 269 (2004), *enfd.* 401 F.3d 282 (5th Cir. 2005), *cert. denied* 546 U.S. 874 (2005) (if employer believes request is ambiguous or overbroad, it must seek clarification or comply with request to extent it encompasses relevant information); *DaimlerChrysler Corp.*, 331 NLRB 1324, 1329 (2000), *enfd.* 288 F.3d 434 (D.C. Cir. 2002) (although employer may have had legitimate objections to providing requested information, it was obliged to make those objections known to the union in a timely fashion); *Yeshiva University*, 315 NLRB 1245, 1248 (1994) (where employer had information in

Applying those principles here, we have little trouble affirming the judge’s finding that the Respondent violated Section 8(a)(5) and (1) of the Act by not timely responding *in some manner* to the Union’s May 11 request for information concerning bargaining unit employees.<sup>8</sup> As found by the judge, paragraphs (h) through (j) of that request related to unit employees’ assigned loads and thus sought information that was presumptively relevant to the Union’s ability to represent those employees. See, e.g., *Kathleen’s Bakeshop*, 337 NLRB 1081, 1094 (2002), *enfd. mem.* 173 LRRM (BNA) 2576 (2d Cir. 2003) (requested information about unit drivers’ delivery routes and products was presumptively relevant because it dealt with their working conditions).<sup>9</sup> Accordingly, the Respondent was required to timely provide that information or to timely present the Union with its reasons for not doing so. The Respondent did neither, and thus violated Section 8(a)(5) and (1) of the Act.

Our dissenting colleague would dismiss the complaint because the Respondent later rebutted the presumptive relevance of the requested unit information and therefore was not required to actually furnish the Union with that information. In his view, then, the Respondent was free to ignore the Union’s request at the time it was made. We do not find his view persuasive, either as a matter of law or policy.

As explained, the duty to provide information is a component of the broader duty to bargain in good faith under Section 8(a)(5) of the Act. The issue in this case must be decided in that context. The question here is not whether the Respondent had a duty to provide the information sought by the Union, but rather whether it had a duty to respond to the Union’s request in a timely way. Board precedent, cited above, requires a timely response even when an employer may have a justification for not actually providing requested information.

Our colleague would distinguish those cases on the ground that they involved requests for *relevant* information. But where, as here, the information sought is *presumptively* relevant, that distinction is immaterial. In such cases, it is reasonable for the union to expect production of the information, unless and until the employer notifies it otherwise. Good faith, in turn, requires the employer to respond promptly with its reasons for not providing the information. Placing this minimal burden

form not requested by the union, employer was required to so notify the union so that it could modify request).

<sup>8</sup> We read the judge’s unfair labor practice finding as being limited to the requested information concerning unit employees, and the Acting General Counsel does not appear to argue otherwise.

<sup>9</sup> The fact that the requested information was not also relevant to a pending grievance, as the judge found, is beside the point.

on the employer is appropriate moreover because, particularly where the requested information is presumptively relevant, the employer is in a clearly superior position to ensure that a dispute is avoided. These are the principles underlying the cases cited above, and they likewise form the basis for our finding in this case.

As our colleague acknowledges, there are good policy reasons for the rule we apply here, not the least of which is encouraging the parties themselves to address potential disputes before they disrupt the collective-bargaining relationship and burden the parties and the public with the cost of administrative investigation and litigation. There is no doubt here, for example, that an unnecessary dispute could have been avoided. The Respondent's belated September 27 response consisted of two pages, and the Union later agreed that its May 11 request had been satisfied.<sup>10</sup> Contrary to our colleague's suggestion, it is more than merely "preferable" in such circumstances that employers act in good faith. The law demands it.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, IronTiger Logistics, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER HAYES, dissenting.

I would reverse the judge and dismiss the complaint. The Act imposes no obligation on an employer to provide requested information that is not relevant to a union's performance of its responsibilities as the exclusive collective-bargaining representative of bargaining unit employees. A fortiori, the Act imposes no obligation on an employer to respond, timely or otherwise, to a request for information that is not relevant. Because there is no exception to the judge's finding that the information requested here was irrelevant, the Respondent did not act unlawfully in failing to timely respond to the Union's request for that information.

Until today, the Board has never held that there is an independent statutory duty to respond to a request for presumptively relevant information, even if that presumption was rebutted in litigation. The presumption is merely an evidentiary tool where relevance is contested. Ultimately, requested information is either legally relevant to a union's representative duties, or it is not. If it is not relevant, then the statutory duty to bargain in good faith is not implicated by the request *or* the employer's failure to respond timely to the request. None of the cas-

<sup>10</sup> We agree with the judge, for the reasons he states, that the Respondent did not establish that the Union's information request was made in bad faith or constituted harassment.

es cited by the Acting General Counsel and my colleagues support their contrary view. In each and every instance, the unlawful failure to respond or delay in responding involved a request for relevant information.

While it might be *preferable* for a party to explain its refusal to provide information which is irrelevant to the statutory bargaining, it is not a violation of the statutory duty to bargain in good faith to fail to do so.<sup>1</sup> On the other hand, whether or not the Union here made its information request in good faith, my colleagues' holding today gives even greater latitude for unions to hector employers with information requests for tactical purposes that obstruct, rather than further, good-faith bargaining relationships. I therefore dissent.

*Kelly Elifson, Esq.*, for the General Counsel.

*Thomas P. Krukowski, Esq.*, for the Respondent.

*Mr. Boysen Anderson*, for the Charging Party Union.

#### DECISION

##### STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Fort Worth, Texas, on March 28, 2011, pursuant to a consolidated complaint that issued on December 22, 2010.<sup>1</sup> Prior to the hearing, Case 16-CB-008084, with which Case 16-CA-027543 had been consolidated, was settled, and the allegations relating to Case 16-CB-008084 were withdrawn. The complaint alleges that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by delaying providing relevant information requested by the Union. The answer of the Respondent denies any violation of the Act. Although I agree with the Respondent that the information sought was not relevant, I find that the Respondent was obligated to timely respond to the request made by the Union and that it failed to do so.

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 Respondent, IronTiger Logistics, Inc., IronTiger, a Missouri corporation headquartered in Kansas City, Missouri, is engaged in the interstate transportation of freight from various locations including Garland, Texas. IronTiger annually derives gross revenue in excess of \$50,000 for the transportation of freight from the State of Texas directly to points located outside

<sup>1</sup> Similarly, it might be *preferable* for an employer engaged in contract negotiations to explain the basis for any economic proposal, but except in limited circumstances the failure to do so is not a violation of the statutory duty to bargain in good faith. See *NLRB v. Truitt Mfg.*, 351 U.S. 149 (1956).

<sup>1</sup> All dates are in 2010 unless otherwise indicated. The charge in Case 16-CA-027543 was filed on July 15 and was amended on December 1.

the State of Texas. IronTiger admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

IronTiger admits, and I find and conclude, that International Association of Machinists and Aerospace Workers, AFL–CIO, the Union or the IAM, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. Background

Thomas (Tom) Duvall is the owner and chief executive officer of IronTiger as well as TruckMovers.com, Inc. TruckMovers has contracts for the transport of trucks from production facilities of Volvo/Mack and Navistar to various locations. The delivery transport to the various locations is carried out by drivers employed by TruckMovers, IronTiger, and some 15 other companies. The contracts between TruckMovers and Volvo/Mack and TruckMovers and Navistar provide that no more than 80 and 75 percent, respectively, of the transports can be provided by any one carrier so that any disruption in service by any one provider would not cause a cessation of all deliveries. The assignment of loads to a particular carrier is made by TruckMovers. The vast majority of deliveries are made by TruckMovers and IronTiger.

IronTiger employs approximately 100 employees at four locations: Garland, Texas; Springfield, Ohio; Macungie, Pennsylvania; and Dublin, Virginia. TruckMovers obtained the transportation contracts with Volvo/Mack and Navistar from Auto Truck Transport. The first contract obtained was at Dublin, Virginia. After TruckMovers obtained the contract, management officials of IronTiger met with the employees of the predecessor. Upon conclusion of their meeting, any employees interested were invited to remain for a presentation by the Union. No management officials of IronTiger remained for the meeting with representatives of the Union. A majority of employees signed cards authorizing the Union to represent them. Pursuant to a card check, IronTiger agreed to recognize the Union. The initial collective-bargaining agreement related to only the location at Dublin, Virginia, and was negotiated between CEO Duvall, Tom Jones, the attorney for IronTiger, and Boysen Anderson, automotive coordinator for the Union. It was effective from September 29, 2008, until September 30, 2011.

Thereafter, when TruckMovers obtained additional contracts, the Union obtained authorization cards from a majority of the predecessor's employees at the other three IronTiger locations, and the collective-bargaining agreement was extended to those locations by separate letters of agreement. The record does not reflect the manner in which the TruckMovers drivers, who are not represented by a union, were hired or whether they operate from the same terminals as the IronTiger drivers.

The bargaining units at each location are identical and include all yard drivers, shop workers, utility workers, and drivers domiciled, and employed at each location.

Article 6 of the collective-bargaining agreement sets out the dispatch procedure for IronTiger drivers. Subparagraph 3 provides that drivers will be “dispatched on a first in first out basis” and that when “two or more IronTiger drivers arrive at the terminal at the same time” priority will be given to the driver

with the most company seniority. Subparagraph 5 provides:

All available loads will be placed on one board in the order of importance of delivery. Available loads may include breakdowns or secondary moves as part of a trip or as a separate dispatch. Old, Hot, or Expedited loads will have priority.

The “board” to which the foregoing provision refers is also referred to as a kiosk and is a listing appearing on a computer screen. TruckMovers makes the assignments of loads, and the assignments are displayed on the computer screen of the carrier to which the load has been assigned. TruckMovers, as already noted, is prohibited by its contracts with Volvo/Mack and Navistar from assigning more than 80 and 75 percent of the loads to any one carrier. IronTiger is not a party to those contracts. The foregoing contractual language relating to dispatch obviously applies only to loads assigned by TruckMovers to IronTiger, and they are shown on the IronTiger kiosk.

IronTiger informed the Union of the restriction upon the amount of work that TruckMovers could assign to any one company, and Anderson does not deny that the Union was informed of that restriction. IronTiger's attorney, Tom Jones, sought to address that restriction by proposing language to be included in article 19 of the collective-bargaining agreement relating to subcontracting by IronTiger. Automotive Coordinator Anderson requested that the proposed language be placed in a letter of agreement because he did not want any other employer to be aware of the agreement into which the Union had entered. Jones agreed. The letter of agreement, executed on September 27, 2008, states:

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers other than IronTiger Logistics and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc., and the International Association of Machinists and Aerospace Workers covering the period from September 29<sup>th</sup>, 2008, through and including September 20, 2011.

### B. Facts

On the morning of March 16, there was an exchange of emails between Automotive Coordinator Anderson and Tom Duvall, the first of which was from Anderson.

Tom—once again the company is not complying with the dispatch language in the CBA. Thus the final warning notice from the IAM. So that we are clear ALL AVAILABLE LOADS ARE TO BE PLACED ON THE BOARD FOR DISPATCH. We have am [sic] Agreement and the company will comply.

Duvall replied by email:

All available *IronTiger* loads ARE placed on the board for dispatch. If you believe that they are not, please give me some specifics so that I can investigate. [Emphasis added.]

Anderson answered:

Tom—don't question me on what I believe; here are the facts,

one driver 1 load—two drivers 2 loads—six drivers 6 loads. Enough of the bullshit.

Three short emails followed. Duvall stated, “We don’t set the priorities. Our customer does.” Anderson answered, “Bullshit, you will abide by the contract.” Duvall replied, “I am.”

On March 29, the Union, in an email from Anderson to Duvall, informed IronTiger that the Union was filing a class action grievance:

Tom—attached you will find a class grievance on the continuing contract violations. Also this shall serve as the notice to cure the contract provision breach outlined in the attached grievance. If the Company ignores this notice the Union will proceed on this grievance under Article 20, Section 1.

Article 20, section 1 of the contract provides that “all grievances and questions of interpretation arising from or in any way pertaining to the provisions of this Agreement shall be submitted to the grievance procedure for determination.” It further provides that there shall be no strike except “in the event the Company intentionally ignores the provisions of this agreement.”

The grievance, dated March 29, alleges violation of articles 6 and 7 of the contract. Article 7 relates to return travel and is not an issue here. Relative to article 6, the grievance states: “The Employer is not placing all available loads on the dispatch board.” The settlement desired is stated as “all loads to be placed on the board asap . . . all drivers shall be [made] whole for all losses when not allow[ed] to pick from all available loads.”

Duvall replied to Anderson by email on April 5:

Boysen,

The Company is in receipt of your class action grievance alleging violation of Article 6-Master Dispatch Procedure and Article 7-Return Travel.

The Company respectfully disagrees with your allegations and states that the Company is in compliance with the provisions of Article 6-Master Dispatch Procedure as well as the provision of Article 7-Return Travel.

Further, concerning your allegations regarding Article 20, Section 1, the Company denies that it has intentionally ignored any of the provisions of the National Master Agreement.

It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the aforementioned Articles. If we are not able to agree then the matter should be submitted to the grievance procedure for determination as set forth and required by Article 20, Section 1.

Anderson replied by email on April 5 stating, in pertinent part:

Your e-mail misstates several facts. . . . This is to advise you that the Union rejects your contention and claim. . . . [T]he Union met with you several times on these issues. You choose to intentionally ignore the Agreement. In short, the Union be-

lieves another meeting on these issues will be none [sic] productive and will proceed with it’s course of actions to correct the contract breach.

On April 12, the Union made an information request of the Company requesting identification of all units dispatched to TruckMovers and IronTiger drivers, respectively, for the last 6 months, the persons responsible for dispatching TruckMovers drivers and the persons responsible for dispatching IronTiger drivers, and documentation “to support why these units were dispatched to TruckMovers drivers” and documentation “to support why these units were dispatched to IronTiger drivers.”

On May 7, the Company responded in a 29-page document that gave the units dispatched to TruckMovers and IronTiger drivers, respectively, and the names of the individuals responsible for dispatching. Don Houk of TruckMovers was identified as the individual responsible for dispatching TruckMovers drivers. Dispatchers at the respective IronTiger terminals were identified as the individuals responsible for dispatching IronTiger drivers. In response to the request for documentation, the response explained that the assignments are “[d]one by system assignment not though email or other written communication.”

I note that the information request sought the identification of the persons responsible for dispatching. It did not seek identification of the persons responsible for assignment of the loads to specific carriers. As already noted, TruckMovers made those assignments. Dispatching drivers occurred after the assignments were made.

The Union, on May 11, sent another information request as follows:

After reviewing the information you provided, the Union is requesting additional information. Please provide the following information:

- (a) Please provide the name for each TruckMovers driver dispatched on the referenced unit(s) outlined in your paragraph No. 1.
- (b) Please provide the destination and mileage for each unit(s) dispatched to TruckMovers drivers in you paragraph No. 1.
- (c) Please identify Don Houk primary employer.
- (d) Please provide Don Houk job title.
- (e) Please provide the name(s) of the person who authorize[d] Don Houk to dispatch the referenced unit(s) outlined in your paragraph No. 1 to TruckMovers drivers.
- (f) Please provide in details the “System Assignment” you referenced in your paragraphs 4 and 8.
- (g) Provide all e-mails, transcripts, faxes, telecommunications and other documentation from your customers(s) to support the units in your paragraph No. 1 be dispatched to Truckmovers drivers.
- (h) Please provide the name for each IronTiger driver dispatched on the referenced unit(s) outlined in your paragraph No. 5.
- (i) Please provide the destination and mileage for each unit(s) dispatched to IronTiger drivers in you paragraph No. 5.
- (j) Provide all e-mails, transcripts, faxes, telecommunications and other documentation from your customers(s)

to support the units in your paragraph No. 5 be dispatched to IronTiger drivers.

IronTiger did not respond to the foregoing request. On July 15, the Union filed the charge herein alleging that IronTiger had failed and refused to provide information since April 12. On July 30, the Union repeated its request of May 11. On September 27, the Union withdrew its charge insofar as it related to the April 12 information request to which IronTiger had responded. Also, on September 27, IronTiger, by Attorney Tom Jones, responded by email to the May 11 request.

The response by Jones initially notes that the letter of agreement provides that “loads not appearing on the IronTiger Logistics drivers’ kiosk are not IronTiger loads.” It then addresses the individual requests and points out that the information relating to TruckMovers drivers relates to nonunit employees and is irrelevant. It confirms, as stated in the May 7 response, that Don Houk is employed by TruckMovers. The response, as did the May 7 response to the April 12 request, explains that there is no paperwork, that assignments are made through a computerized system. Relative to the request for information relating to unit employees, i.e., the name of each IronTiger driver dispatched to deliver the units listed in the May 7 response and the destination and mileage related to those units, Jones requested that the Union explain the relevance insofar as the work had been performed by IronTiger drivers. He points out that there were over 10,500 units involved and that the request was “harassment, burdensome, and irrelevant.” Jones closes by pointing out that IronTiger had requested that the parties meet in its April 5 response to the grievance and that the request had been refused. He again offered to meet.

On October 12, Anderson responded by email. His response states that the letter of agreement “has nothing to do with the Union’s request for information.” It raises a claim that loads had been removed from the IronTiger kiosk and asserts that the information sought relating to TruckMovers drivers is relevant because “in the past the Company removed loads from the IronTiger board and dispatch[ed] such loads to non-union drivers.” Although Anderson asserted that the information relating to IronTiger drivers assigned the units and the destination and mileage related to those units was relevant “in order to investigate the appropriate grievances,” no grievance relating to removal of loads had been filed and the Union had made no complaint or filed any grievance relating to improper payment to IronTiger drivers for loads that they had delivered. Anderson’s October 12 response does not address the claim of harassment or burdensomeness, nor does it respond to the offer to meet.

IronTiger had, on March 30, 2009, settled a grievance relating to the removal of loads from the IronTiger dispatch kiosk. The brief of the General Counsel refers to testimony by Anderson that he received reports that loads had been removed from the IronTiger kiosk. Insofar as any driver was aware that a load had been removed, the driver would be able to identify the load that was removed, and, as in 2009, an appropriate grievance could be filed. Whether the reports Anderson received were accurate is immaterial insofar as neither the March 29, 2010, grievance nor the information request relates to removal of loads.

In subsequent communications, the Union continued to assert that the contract had been violated, and IronTiger continued to deny any violation of the contract. IronTiger continued to seek a meeting, but the Union did not agree to meet.

Notwithstanding its contention that IronTiger was violating the collective-bargaining agreement, the Union, as of May 13, contended that there was no contract at Springfield, Ohio, or Garland, Texas. On May 13, in a telephone conversation, Anderson informed IronTiger’s attorney, Tom Jones, that IronTiger did not have a collective-bargaining agreement with the Union at Springfield or Garland. On May 18, Jones sent an email to Anderson confirming the May 13 conversation and seeking further information relating to the position of the Union. Anderson responded by email on May 21 stating that “we have not [sic] agreements at the Garland, Texas, and Springfield, Ohio, locations.”

IronTiger filed a charge, Case 16–CB–008084, against the Union. That charge resulted in a complaint being issued against the Union. As already noted, that case was consolidated with the case here. Thereafter, Case 16–CB–008084 settled, and those allegations were withdrawn.

### *C. Analysis and Concluding Findings*

The complaint herein issued on December 22, after the Respondent’s September 27 response. It alleges that the failure to timely furnish information “necessary for, and relevant to, the Union’s performance of its duties” as the representative of the unit employees violated Section 8(a)(5) of the Act. As established by emails on March 15 and 16, 2011, following conference calls in this proceeding, the Union confirmed that the Respondent had sufficiently responded to its information request. At the hearing, counsel for the General Counsel confirmed that the only issue before me is “unlawful delay in furnishing requested information.”

The General Counsel argues that the information sought was relevant and that, even if it was not, the Respondent was obligated to respond to the request of the Union.

The Respondent contends that the information sought was not relevant. Both the April 12 and the May 11 requests related to the March 29 grievance that IronTiger had not placed “all available loads on the dispatch board.” No other grievance was pending. The grievance does not assert that any loads had been removed from the IronTiger kiosk. The Union did not mention removal of loads until its letter of October 12. The letter of agreement states that “loads not appearing on the IronTiger Logistics drivers’ kiosk are not IronTiger loads.”

At the hearing herein, counsel for IronTiger questioned Anderson regarding the May 13 contention of the Union that the parties had no contract. Notwithstanding the Union’s contention that there was no contract, Anderson claimed that the March 29 grievance had not been forfeited by the failure of the Union to seek further processing of the grievance after IronTiger’s April 5 response. It is unnecessary to address the foregoing conflicting contentions insofar as there is no allegation relating to the grievance, only the information request.

I agree with the Respondent that the information sought in the May 11 request was not relevant. The information relating to the identification of the TruckMovers driver assigned to each

load as well as the destination and distance of each load related to nonunit employees and was not presumptively relevant. The request regarding the individual IronTiger drivers assigned to each IronTiger load was presumptively relevant insofar as the request related to unit employees. Although presumptively relevant, the information concerning the assignment, destination, and miles driven by the drivers assigned to the IronTiger loads was unrelated to the grievance relating to failure to place all loads on the IronTiger kiosk. Duvall explained that a driver assigned a shorter trip would not necessarily earn less because that driver would be able to return sooner and be available for another dispatch. The Union had made no complaint, filed no grievance, or made any claim that any IronTiger drivers were improperly paid. The information relating to assigned driver, destination, and distance was not relevant.

Duvall testified that the Respondent did not respond to the May 11 information request because it was “nothing more than harassment.” He explained that, on March 24, IronTiger had refused to reinstate an employee. Anderson informed him that, if IronTiger wanted “labor peace,” the employee needed to be reinstated and that, if he was not reinstated, Anderson would “make your [Duvall’s] life hell.” The brief of the Respondent makes several references to the foregoing comment which Anderson did not deny making. Although Duvall considered the May 11 information request to be harassment, as the brief of counsel for the General Counsel points out, the exchange of emails on March 16 relative to placing all loads on the board was before the March 24 meeting. The position of the Union had been stated prior to Anderson’s March 24 comments. The Respondent fulfilled the Union’s April 12 information request and made no claim of harassment with regard to that request.

Anderson recalled meeting with Attorney Jones regarding an unrelated matter on May 12, the day after the May 11 information request and the day before he asserted that there was no contract at Garland or Springfield. In casual conversation, Anderson recalled that Jones referred to the information request, stating that Anderson was “asking for a lot of bullshit.” Anderson recalls answering, “Yes I am, but I need it.” He claims that Jones stated that he would be responding, but no response was received until September 27. Anderson’s agreement that the information sought was “bullshit,” absent an explanation regarding why the information was needed, confirms my finding that the information requested was irrelevant.

Notwithstanding my finding that the information sought in the May 11 request was not relevant, I agree with the General Counsel that an employer may not ignore a union’s request for information. Information relating to unit employees is presumptively relevant. “It is well established that when a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information was not furnished.” *Beverly California Corp.*, 326 NLRB 153, 157 (1998). The Union requested information relating to unit employees. The Respondent was obligated to inform the Union in a timely manner that it would not provide the information and the reasons for its refusal.

An employer cannot simply ignore a union’s information request. See *Daimler Chrysler Corp.*, 331 NLRB 1324, 1329 (2000); *Interstate Food Processing*, 283 NLRB 303, 304 at fn.

9 (1987). The Respondent herein was obligated to inform the Union in a timely manner of the reasons that it did not believe that the information sought was relevant. “[A]n employer must respond to a union’s requests for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance within a reasonable period of time. *Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act.* Some kind of response or reaction is mandatory.” *Columbia University*, 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal*, 232 NLRB 109 (1977). [Emphasis added.] The September 27 response, more than 4 months after the May 11 request, was not made in a timely manner. The Respondent’s brief does not address the foregoing precedent.

Although the Respondent did not violate the Act by failing to provide the irrelevant information requested by the Union on May 11, I find that, by not providing a timely response to the Union’s May 11 information request, the Respondent failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) of the Act.

#### CONCLUSION OF LAW

By failing to respond to the May 11, 2011 information request of the Union in a timely manner, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

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

The Respondent will be ordered to post and email an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, IronTiger Logistics, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to respond to information requests made by International Association of Machinists and Aerospace Workers, AFL–CIO, in a timely manner.

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

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

(a) Within 14 days after service by the Region, post at its facilities in Garland, Texas; Springfield, Ohio; Macungie, Pennsylvania; and Dublin, Virginia, copies of the attached notice

<sup>2</sup> 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.

marked Appendix.<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 16 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. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an 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 facility 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 at any time since May 11, 2010.

(b) 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.

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<sup>3</sup> 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.”

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

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- 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 respond to information requests made by International Association of Machinists and Aerospace Workers, AFL–CIO, in a timely manner.

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

IRONTIGER LOGISTICS, INC.