

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES, SAN FRANCISCO BRANCH OFFICE**

**BUD ANTLE, INC.**

**and**

**Case 32-CA-078166**

**TEAMSTERS LOCAL UNION NO. 890,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

*Gabriela Teodorescu Alvaro*, for the General Counsel.  
*David N. Buffington*, for the Respondent.  
*David A. Rosenfeld and Sarah Wright-Schreiberg*,  
for the Charging Party.

**DECISION**

**MARY MILLER CRACRAFT**, Administrative Law Judge: This case involves allegations that Bud Antle, Inc. (Respondent) violated Section 8(a)(1) and (5) of the Act<sup>1</sup> by failing to provide information that was requested by Teamsters Local Union No. 890, International Brotherhood of Teamsters (Union) in order to process grievances.<sup>2</sup> Respondent asserts in its answer to the complaint that the information is not necessary for and relevant to the Union's performance of its duties as the exclusive representative of Respondent's employees, that the information requested is protected by attorney-client or work product privilege, that the requests were overly broad, and that the requested information is protected by confidential trade secret, proprietary information, and third-party privacy concerns. The hearing was held in Oakland, California on November 20, 2012.<sup>3</sup>

On the entire record, including my observation of the demeanor of the witnesses,<sup>4</sup> and after considering the briefs filed by counsel for the Acting General Counsel, counsel for the Charging Party, and counsel for the Respondent, I make the following findings of fact and conclusions of law.

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<sup>1</sup> The National Labor Relations Act, as amended (the Act), 29 U.S.C. Sec. 158(a)(1) and (5).

<sup>2</sup> The underlying unfair labor practice charge was filed by the Union on April 4, 2012. Complaint and notice of hearing issued on August 14, 2012.

<sup>3</sup> All dates are in 2012 unless otherwise referenced.

<sup>4</sup> Credibility resolutions have been made based on a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

## FINDINGS OF FACT

### 5 I. Jurisdiction and Labor Organization Status

Respondent, a wholly owned subsidiary of Dole Fresh Vegetables, Inc., is a California corporation engaged in harvesting and processing of vegetables at various facilities located in Salinas Valley, Oxnard, Huron, and Imperial Valley, California. In conducting its operations during 2011, Respondent sold and shipped from its California facilities goods valued in excess of \$50,000 directly to points outside the State of California. Respondent also sold and shipped from its California facilities goods valued in excess of \$50,000 directly to enterprises inside the State of California who are directly engaged in interstate commerce. For purposes of this proceeding, Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

### II. Bargaining Relationship<sup>5</sup>

20 The parties have had a collective-bargaining relationship for about 50 years<sup>6</sup> and have entered into successive contracts over the years. The most recent contract is the 2011–2014 Master Agricultural collective-bargaining agreement (the CBA) in effect during all times relevant to this proceeding. The parties agree that article I, section 1.2, “Scope of Union Recognition,” sets forth the unit description which is appropriate for the purposes of collective bargaining. The CBA covers a non-agricultural<sup>7</sup> unit of all employees involved in harvesting head lettuce, broccoli, cauliflower, and celery. The contractual unit description is as follows:

[Respondent] recognizes the Union and only the Union as the exclusive Collective-Bargaining representative for a single bargaining unit of all employees of [Respondent] covered by Agricultural Labor Relations Board Certification No. 75-RC-19-M and the order of the National Labor Relations Board in Case No. 32-UC-263, plus employees engaged in similar functions in Arizona and California, excluding employees of all vacuum-cooling plants. The terms of this contract do not extend to office and sales employees, security guards, or professional or supervisory employees as such job classifications are defined and interpreted under the Labor-Management Relations Act, as amended. The Union may service this contract with its own full-time employees without the prior written consent of [Respondent].

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<sup>5</sup> The allegations regarding the parties’ bargaining relationships were admitted at hearing for purposes of this proceeding only.

45 <sup>6</sup> Union Representative and Vice-President Fritz Conle testified without contradiction that the Union has represented Respondent’s employees since the late 1950s. He estimated the parties have executed about 20 collective-bargaining agreements.

50 <sup>7</sup> Administrative notice is taken of Case 32-UC-263 (1992) incorporated in the unit description holding, *inter alia*, that Respondent’s field harvesting employees are not agricultural employees because a regular portion of their work effort is directed towards harvest and harvest support for crops of a grower other than their employer.

At all times relevant, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of unit employees. In addition to the CBA, the parties also entered into a May 5, 2000 Letter of Understanding (LOU) regarding subcontracting of bargaining unit work during harvest operations. Specifically, paragraph 2 of the LOU provides:

[Respondent] shall not utilize subcontractors, including labor contractors, to perform bargaining unit work in harvest operations until it has first called the seniority list at the beginning of the season in accordance with current practice, has placed all returning seniority employees who respond to the call in accordance with [the CBA] in a Company crew and has made a bona fide effort to hire new employees. Such subcontractors may not be utilized in harvesting operations where harvesting employees are laid off, including discontinued operations from which harvesting employees were laid off. [Respondent] shall use its best efforts to assign harvesting work so that subcontractors do not work longer hours than [Respondent] crews.

#### **Timeliness – Section 10(b) of the Act**

Before turning to the merits of this case, it is necessary to address Respondent’s argument that the Board lacks jurisdiction to hear it. Section 10(b) of the Act provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge . . . .” Respondent argues that the complaint alleging failure to provide information bears “no relevant relationship or causal connection” to the April 4 unfair labor practice charge which underlies issuance of the complaint. The charge claims that Respondent violated Section 8(a)(1) and (5) of the Act as follows:

Since on or about February 19, 2012, the employer has failed and refused to provide the Union with information necessary and relevant to collective bargaining.

Since on or about February 19, 2012, the employer has failed and refused to provide the Union with information relevant to the subcontracting of bargaining unit work.

Since on or about March 19, 2012, the employer has failed and refused to provide the Union with information relevant to a new operation located in Gonzales, California, which may displace bargaining unit workers, and may provide work opportunities to bargaining unit members currently on lay-off.

All parties agree that the third paragraph above regarding Gonzales, California bears no relation to the case before me. Thus, the first two paragraphs must be considered as the basis for issuance of complaint. The literal reading of these two paragraphs describes the allegations contained in paragraph 7 of the complaint<sup>8</sup> and I find there is no basis for challenge of that portion of the complaint.

Complaint paragraphs 8, 9, and 10 set forth the alleged refusals to provide information on March 12 (par. 8), March 26 (par. 9), and March 30 (par. 10). It has long been recognized

<sup>8</sup> Although the actual date of the first information request was February 17, the date in the charge, February 19, is not materially different.

that “the Board is not precluded from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board.” *NLRB v. Fant Milling Co.*, 360 U.S. 301, 308–309 (1959). In order for the complaint allegations in paragraphs 8, 9, and 10 to be supported by the charge language, it is necessary to show that these allegations are “closely related.” *Carney Hospital*, 350 NLRB 627, 628–629 (2007), incorporating and clarifying the factors enunciated in *Redd-I*, 290 NLRB 1115, 1118 (1999), enf. denied in relevant part, 235 F.3d 669 (D.C.Cir. 2001), paraphrased as follows:

- 5 (1) The common legal theory prong: whether the otherwise untimely allegations involve the same legal theory as the allegations in the timely charge;
- (2) The chain or progression of events prong: whether the two sets of allegations demonstrate similar conduct during the same time period with a similar object or there is a causal nexus between the allegations; and
- 15 (3) The common defense prong: whether a respondent would raise the same or similar defenses to both the untimely and timely charge allegations.

Examination of the factors clearly illustrates that the allegations of paragraphs 8, 9, and 10 are closely related to the allegations in the underlying unfair labor practice charge: refusal to provide information on February 19. Thus, the complaint allegations in paragraphs 7, 8, 9, and 10 involve alleged refusal to furnish information—the same legal theory set forth in the underlying unfair labor practice charge; all of the allegations arise from the 2012 spring harvesting hiring process and are related to the Union’s concern regarding subcontracting during the 2012 spring harvesting; and, Respondent has raised the identical defenses to these allegations. Thus, I find that the allegations in paragraphs 8, 9, and 10 are closely related to those in the underlying charge and the allegations in paragraph 7 are identical to the allegations in the charge. Thus, I find jurisdiction to consider the complaint allegations.

### 30 III. Information Requests

The General Counsel and the Union contend that the information requested<sup>9</sup> deals with subcontracting of bargaining unit work. Respondent, on the other hand, asserts that two of the four information requests relate only to individual grievances for failure to hire and the information is irrelevant to those grievances because the individuals were discharged for cause prior to their making the applications leading to the grievances. Thus, subcontracting information has nothing to do with whether the individuals named in the grievances were qualified applicants. Additionally, Respondent asserts that the information sought was confidential trade secret and proprietary information relating to volume, protected by attorney-client privilege, and attorney work product doctrine, and that producing it would violate third-party privacy rights.

40 Endorsing a liberal “discovery-type standard,” the Supreme Court held in *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437, 438 (1967), that an employer is obligated to furnish information pertaining to grievances during the term of the collective-bargaining agreement. An employer’s refusal to supply such information is a violation of the duty to bargain in good faith. *Curtiss-Wright*, 145 NLRB 152, 156–157 (1963), enf. 347 F.2d 61 (3d Cir. 1965). A request for information regarding bargaining unit employees’ terms and conditions of employment is “presumptively relevant” to a union’s collective-bargaining duties. *Southern California Gas Co.*,

50 <sup>9</sup> All references to requested information relate to the information set forth in the complaint. The Union’s actual information requests contain additional requests which are not included in the complaint.

342 NLRB 613, 614 (2004). A request for information regarding matters outside the bargaining unit, such as information about subcontracting, is not considered presumptively relevant and thus the relevance is required to be established somewhat more precisely. *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6<sup>th</sup> Cir. 1976). Thus, the standard for determining the duty to provide such information has been described as follows:

When [a] union asks for information which is not presumptively relevant, the showing by the union must be more than a mere concoction of some general theory which explains how the information would be useful to the union in determining if the employer has committed some unknown contract violation . . . . Conversely, however, to require an initial, burdensome showing by the union before it can gain access to information which is necessary for it to determine if a violation has occurred defeats the very purpose of the “liberal discovery standard” of relevance which is to be used. Balancing these two conflicting propositions, the solution is to require some initial, but not overwhelming, demonstration by the union that some violation is or has been taking place.

*San Diego Newspaper Guild, Local 95 v. NLRB*, 548 F.2d 863, 868 (9<sup>th</sup> Cir. 1977). Although the burden “is not an exceptionally heavy one,” it does require a showing of probability that the desired information is relevant and . . . would be of use to the union in carrying out its statutory duties and responsibilities. *Saginaw Control & Engineering, Inc.*, 339 NLRB 541 (2003).

Finally,

[I]n assessing the relevance of the information, the Board does not pass on the merits of the union’s claim that the employer breached the collective-bargaining contract . . . thus, the union need not demonstrate that the contract has been violated in order to obtain the desired information.

*Island Creek Coal Co.*, 292 NLRB 480, 487 (1989).

#### A. February 17 Request

On February 17, 2012, Juan Heredia, described as an experienced celery harvester and former employee of Respondent, who claimed to be ready and available to work in the Oxnard area, filed a grievance alleging that Respondent used Farm Labor Contract crews instead of hiring him. Union Representative and Vice-President Conle himself was aware that there were numerous farm labor contractor crews engaged in harvesting celery in the Oxnard area. The grievance claimed that failure to hire Heredia violated article II section 2.3 (nondiscrimination), article IX section 9.9 (provisions relating to grievances including compensation and discrimination), article XIII (subcontracting is allowed but will not be used “for the purpose of subverting the bargaining unit”), and the LOU. On the grievance form in the space reserved for information requested, Conle, on behalf of the Union, requested on February 17 and again on February 29, that Respondent furnish, *inter alia*, the following information for the weeks of November 6, 2011, through February 19, 2012, “in order to determine whether contractors are performing bargaining unit work, and under what conditions, and how they are being scheduled”:<sup>10</sup>

<sup>10</sup> Other documents were requested in the grievance of February 17. However, the documents listed above are the ones at issue in this litigation. Complaint was not issued regarding the remaining information requested.

1. Hours worked each day by each labor contractor or “custom harvesters” crew engaged in harvesting celery under the Dole label.
- 5 2. Number and type of boxes harvested each day by each labor contractor or “custom harvester” crew engaged in harvesting celery under the Dole label.
3. Copies of all contracts between Bud of California . . . and each and every labor contractor or “custom harvester” or other entity engaged in harvesting fresh vegetables under the Dole label or for Dole Fresh Vegetables or performing any other bargaining unit work.
- 10 4. A list of the blocks where non-Bud of California employees harvested Dole label produce in November and December 2011, and January and February 2012.
5. A list of the farmers for whom non-Bud of California employees harvested Dole label produce in November and December 2011, and January and February 2012, and the crews assigned to each farmer.
- 15 6. Copies of all applications for work submitted to Bud of California and/or Dole Fresh Vegetables and/or other Dole related entities involved in harvesting in the Oxnard area from October 1, 2011 to date.

20 Conle explained that he asked for the number of hours worked by each labor contractor in order to determine how much contracting out of bargaining unit work was occurring. He asked about the number and type of boxes because there are different hourly and/or piece rates by the box and different piece rates for different types of boxes. This information would illustrate the extent of subcontracting and whether subcontractor crews were being assigned more remunerative, better-paying boxes. Conle explained  
 25 that the Union required copies of contracts between Respondent and labor contractors, custom harvesters, or other entities engaged in harvesting celery in order to determine if subcontractors were custom harvesters or whether the subcontractors were contracted by the farmers rather than Respondent. Conle explained that the Union required a list of farmers for whom non-Respondent employees harvested and the crews assigned to  
 30 each farmer because Respondent harvests on some fields owned and controlled by individual farmers.

35 As to “blocks” information, Conle explained that “blocks” refers to the fields where the actual work is performed. He and other Union representatives had observed labor contractor crews working in the same field on the same day or on successive days as bargaining unit employees. The request for a list of blocks where non-unit employees harvested and the crews assigned to each farmer would indicate who is utilizing subcontracting and how much subcontracting is being used. Similarly, the Union  
 40 requested a list of farmers who utilized non-unit employees and the crews assigned to each farmer in order to discover which entities were using subcontractors and where. The Union requested harvesting applications in the Oxnard area from October 1, 2011 to date in order to determine how many individuals applied for work and which applicants were turned down, in order to discern whether Respondent was making a bona fide effort to recruit employees consistent with the terms of the LOU.

45 Liborio Rodriguez, Respondent’s labor relations manager, replied by letter of February 23 stating that the grievance lacked merit. An employment termination document for job abandonment for Mr. Heredia dated May 6, 2010 was attached. As to the information request, Respondent stated that the information was not relevant to “this  
 50 case” and, further, that the information was “considered Dole’s operational business decision”—not subject to disclosure. Rodriguez further asserted that Respondent was in full compliance with the subcontracting provisions of the parties’ agreements. The

Union’s e-mail of February 29 noted that Heredia denied driving in an unsafe manner and also stated that he did not receive any warning/termination letter. The e-mail concluded, “Furthermore, in order to determine if the [Respondent] in its celery operations is in violation of the contract provisions . . . and the LOU . . . the Union will  
 5 need all of the information requested in the original grievance.” Rodriguez responded to the e-mail stating that he would formally reply by letter. However, no letter was sent. To date, the Union has not received the requested information nor has it received a request for any type of accommodation or confidentiality agreement regarding the requests or a request for explanation of the relevance. Rodriguez agreed that he had not provided  
 10 any of the information requested because, “I didn’t see any relevance to [the Juan Heredia] case.”

### March 12 Request

15 On March 12,<sup>11</sup> pursuant to a grievance filed by the Union on behalf of all Bud of California Yuma cauliflower crews claiming that Respondent sent home its cauliflower crews around 3 p.m. on Friday, March 9, and Monday, March 12 while the labor contractor and/or “custom harvester” crews worked more hours in violation of article VII,  
 20 section 7.6 (job assignments), article II, section 2.3 (nondiscrimination) and article 13 (subcontracting) of the CBA “and understandings between the parties,” the Union requested, *inter alia*,<sup>12</sup> the following information for the weeks ending March 10 and 17:

1. Hours worked each day by each labor contractor or “custom-harvester” crew engaged in harvesting Cauliflower under the Dole label.
- 25 2. Number and type of boxes harvested each day by each labor contractor or “custom harvester” crew engaged in harvesting Cauliflower under the Dole label.
3. Copies of all contracts between Bud of California “and each and every farmer, grower, partner, corporation, labor contractor or “custom harvester” or other entity engaged in harvesting Cauliflower under the Dole label or for Dole Fresh  
 30 Vegetables.”
4. A list of the blocks where non-Bud of California employees harvested Dole label produce during the Yuma/Imperial Valley 2011/2012 Harvesting season.
5. A list of the Farmers for whom non-Bud of California employees harvested Dole label produce during the Yuma/Imperial Valley 2011/2012 Harvesting season,  
 35 and the crews assigned to each farmer.

Conle explained that the Union had received information that on two different days, labor contractor crews worked more hours than the bargaining unit crews. The Union requested all of the above information in order to determine whether contractors were performing bargaining unit  
 40 work. The hours worked each day by each labor contractor or custom harvester crew was requested to determine to what extent bargaining unit work was being subcontracted. The number and type of boxes harvested each day was necessary in order to determine how much subcontracting was occurring. This information is different than the hours worked because the harvesters are paid either on an hourly basis or by the box. The contracts between Respondent  
 45 and labor contractors or custom harvesters would indicate whether subcontracting was

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<sup>11</sup> Although the date on this request shows as “March, 12, 2011,” all parties agree that it was actually March 12, 2012.

<sup>12</sup> Other information was requested by the Union pursuant to the March 4 grievance.  
 50 However, complaint was not issued with regard to the other information. The information set forth above is the only information at issue regarding the March 4 grievance.

occurring and the list of blocks would tell the Union what fields unit employees were working and what fields subcontractors were working. The list of farmers for whom non-unit employees harvested and the crews assigned to each farmer would enable the Union to determine whether subcontracting was going on in Respondent controlled field and which crews were working in the fields.

Respondent replied on March 30 stating that Respondent was not in violation of the subcontracting agreement of the parties and further stating, “In regards to your request for information, please understand that Company operation business decision and information are not subject to disclosure.” The Union responded on April 4 reasserting that the subcontracting provisions of the contract were being violated and stating that the Union needed all of the information requested in the grievance. Conle testified that the information has never been provided and that Respondent did not request any type of accommodation or explanation of relevance with respect to the information requested nor did Respondent have any further communication with the Union about the information. Rodriguez agreed that he had not provided the information testifying that the grievance was open and pending and still needed to be discussed with the Union.

#### March 26 Request

Union Vice-President Conle had observed non-bargaining unit crews and Respondent crews working in the same areas performing bargaining unit work. The Union filed a grievance on March 26 on behalf of Pedro De Anda, a lettuce cutter, claiming that Respondent failed and refused to hire De Anda, an experience lettuce harvester ready and available for work in the Huron and Salinas areas, and instead hired additional harvest employees using Farm Labor Contractor crews. The Union claimed that Respondent violated article II section 2.3, article IX, section 9.9 (Compensation and Discrimination), article XIII (Subcontracting), and the LOU. The grievance requested, *inter alia*,<sup>13</sup>

1. Hours worked each day by each labor contractor or “custom-harvester” crew engaged in harvesting head lettuce under the Dole label.
2. Number and type of boxes harvested each day by each labor contractor or “custom harvester” crew engaged in harvesting head lettuce under the Dole label.
3. Copies of all contracts between Bud of California “and each and every farmer, grower, partner, corporation, labor contractor or “custom harvester” or other entity engaged in harvesting head lettuce under the Dole label or for Dole Fresh Vegetables.
4. A list of the blocks where non-Bud of California employees harvested Dole label produce during March 2012.
5. A list of the farmers for whom non-Bud of California employees harvested Dole label produce in March 2012, and the crews assigned to each farmer.
6. Copies of all applications for work submitted to Bud of California and/or Dole Fresh Vegetables and/or other Dole related entities involved in harvesting in the Huron and Salinas areas, from March 1, 2012 to date.

<sup>13</sup> Numerous other documents were requested. The documents listed above are the ones at issue in this litigation. Complaint was not issued regarding the remaining information requests.

Conle explained that the Union requested the information for the period from March 17 to date in order to determine whether contractors are performing bargaining unit work and, if so, under what conditions. The Union requested information about hours worked each day by each labor contractor or custom harvester and boxes harvested each day by each labor contractor or custom harvester in order to determine the extent of subcontracting, whether hourly paid or piece rate. Contracts of labor contractors and custom harvesters were necessary to determine working conditions, scheduling and other terms and conditions of subcontracting. The Union requested a list of the blocks where non-unit employees harvested because Conle had seen unit crews as well as contractor crews in the same areas. The list of the blocks would confirm his visual observations and show whether subcontracting occurred in those fields. The list of farmers who used contract crews would indicate whether individual farmers were using subcontractors or whether Respondent was using subcontractors. The applications for work would indicate whether any other individuals were denied work while subcontractors were being utilized.

On March 30, Respondent denied the Union's information request stating that the information requested was considered Dole's operational business decision and thus not subject to disclosure. Respondent asserted that it was fully compliant with subcontracting provisions and also noted that De Anda was terminated in January for job abandonment. The Union responded on April 4 reasserting its need for the information and stating that De Anda had not been terminated. Conle testified that the Union had not received the requested information except for a list of employees actually hired, for a one-month period, which partially responded but did not completely respond to item 6 above. Conle further testified that the Union had not been contacted by Respondent for any accommodation regarding the information requested. Rodriguez testified that he did not provide the information because it was not related to the January termination of De Anda. He did not ask the Union to explain the relevance of the information. Rodriguez further testified that although his letter of March 30 stated that he would refer the information request to legal counsel, he had in fact not done so.

### March 29 Request

On March 29, Conle filed a grievance on behalf of all "applicants, Local 890" grieving failure to hire unit applicants in the celery harvesting, lettuce harvesting, broccoli harvesting, cauliflower harvesting, greenhouse and transplant operations and field haul trucking. The grievance claimed that instead of hiring unit employees, Respondent used Farm Labor Contractor crews and FLC employees in violation of article II section 2.3 (Non-discrimination), article XIII (Subcontracting), and the LOU. Conle had personally observed bargaining unit crews and contractor crews working in the same celery fields in Oxnard and Salinas and lettuce fields in Salinas and Huron and believed that those fields were controlled by Dole. Other Union agents had observed the same thing in other areas. The Union was aware that about 150 former unit employees were referred to Respondent to apply for work. Many of them reported back that they were denied work. Conle was also concerned that the Huron recall of unit employees was handled badly<sup>14</sup> and might constitute a failure to make a bona fide effort to rehire. Among the documents requested pursuant to this grievance are the following complaint documents:<sup>15</sup>

<sup>14</sup> According to Conle, Respondent advised employees to call a phone number for recall information. The recording on this phone was from last year and did not provide recall information for the current year. Further, the reading of the seniority list, by which employees select their supervisor and position, was delayed.

<sup>15</sup> Numerous other documents were requested. The documents listed above are the ones at issue in this litigation. Complaint was not issued regarding the remaining information requests.

Continued

1. Hours worked each day by each labor contractor or “custom-harvester” crew engaged in harvesting fresh vegetables under the Dole label or performing other bargaining unit work.
- 5 2. Number and type of boxes harvested each day by each labor contractor or “custom harvester” crew engaged in harvesting fresh vegetables under the Dole label.
- 10 3. Copies of all contracts between Bud of California . . . and each and every farmer, grower, partner, corporation, labor contractor or “custom harvester” or other entity engaged in harvesting fresh vegetables under the Dole label or for Dole Fresh Vegetables, or performing any other bargaining unit work.
- 15 4. A list of the blocks where non-Bud of California employees harvested Dole label produce in November and December 2011, and January, February, and March 2012.
- 20 5. A list of the farmers for whom non-Bud of California employees harvested Dole label produce in November and December 2011, and January, February, and March 2012 and the crews assigned to each farmer.
6. Copies of all applications for work submitted to Bud of California and/or Dole Fresh Vegetables and/or other Dole related entities involved in harvesting fresh vegetables under the Dole label or performing other bargaining unit work, from October 1, 2011 to date.
7. Copies of any logs, memos, or notes listing applicants maintained by any Bud of California supervisors or office personnel.

25 Conle explained that the information requested was specifically limited to the period November 6, 2011, through the end of March 2012, so that the Union could determine whether contractors were performing bargaining unit work and, if so, under what conditions and how it was being scheduled. Conle explained that the Union told about 150 individuals to apply for work with Respondent and many of them reported back that they were denied work. Conle also  
 30 noted that the reading of the seniority list, which allows employees to choose their crew and machine in order of seniority, in Huron was delayed. In Conle’s view, delay in reading the seniority list meant that employees went elsewhere in order to guarantee immediate employment for the short lettuce season. This, in turn, would result in more subcontracting.

35 As with the other requests, Conle explained that the hours worked and the number and type of boxes information requests were geared to determining how much subcontracting was going on, the type of work being subcontracted, and the type of boxes being subcontracted. The type of boxes is an important factor in determining income. Some boxes are complicated and time consuming and take a long time to harvest while other boxes are easier and quicker to  
 40 harvest. Therefore, the type of work subcontracted is an important factor. The contracts were requested in order to determine what kind of subcontracting was occurring. Block information was requested in order to determine in what fields subcontracting was taking place. The information regarding farmers working non-unit employees and the crews assigned to each farmer was necessary, according to Conle, because unit crews and contractor crews had been  
 45 observed in the same fields. The Union believed these fields were controlled by Dole but needed the contracts in order to determine if the subcontracting was attributable to Respondent. Applications for work and documents listing applicants were necessary to determine whether Respondent was making a bona fide effort to hire employees before resorting to subcontracting.

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Respondent replied by letter of April 5 denying the Union’s information request because the information was not relevant and stating that the information requested was considered Dole’s operational business decision and not subject to disclosure. On April 21, the Union reasserted its need for the requested information. By letter of May 7, Respondent provided the names of those hired from April 9–21 as well as various individuals hired in prior years. Thus, Respondent partially responded to one item in the information request. Respondent also reiterated its “operational business decision” rationale for refusing to provide the information. To date, the Union has not received the requested information nor has Respondent requested any accommodation regarding production of the information. Rodriguez agreed that he had not provided the information stating, “I didn’t see any relevance to that, because we had not recalled all the employees by that time.” Rodriguez explained that usually all employees are recalled by the second week of April. In fact, Rodriguez further explained, Respondent had not yet started the recall at the time the grievance was filed. However, Rodriguez agreed that by April 5, the date of his letter to Conle refusing to provide the information, there had been hiring in Oxnard and Huron and employees were beginning to be recalled in Salinas for broccoli. According to Conle, Respondent did not seek any clarification of the Union’s request for information.

#### ANALYSIS

I find there is a probability that the information sought is relevant and necessary to the Union’s collective-bargaining duties. As to the February 17 request, former employee Heredia, an experienced celery harvester, informed the Union that he had been turned down for a job with Respondent. At the same time, the Union was aware that numerous farm contract laborer crews were engaged in harvesting celery in the Oxnard area. These facts sufficiently indicate that a violation of the CBA or the LOU may have been taking place. The documents requested in the Union’s grievance of February 17 are relevant to the issue of whether Heredia and other applicants were not being utilized in violation of the CBA and the LOU. Respondent’s characterization of the February 17 grievance as the “Heredia grievance” selectively focuses only on certain parts of the grievance. However, reading the entire grievance, it is clear that utilization of farm labor contractor crews rather than hiring additional celery harvest employees is a basis for the grievance. The documents requested directly relate to this contention.

Similarly, the Union was informed by Yuma cauliflower crews that Respondent sent them home around 3 p.m. on Friday, March 9, and Monday, March 12 while the labor contractor and/or “custom harvester” crews continued working. The March 12 grievance was filed and documents requested were directly related to whether contractors were performing bargaining unit work. The March 26 grievance was filed when Respondent refused to hire De Anda, a lettuce cutter, and instead hired additional farm labor contractor crews. The Union had De Anda’s information as well as having observed non bargaining unit crews in the same area performing bargaining unit work. The information requested directly relates to whether contractors were performing bargaining unit work. Finally, after observing bargaining unit and contractor crews working in the same fields, the Union filed the March 29 grievance was claiming Respondent failed to hire for its harvesting operations and instead used contract crews. The information requested was directly related to this grievance.

In *United Graphics*, 281 NLRB 463 (1986), the parties’ collective-bargaining agreement allowed the employer to acquire temporary workers from an employment agency whenever it was unable to obtain such employees through the union. After being informed by unit employees that the employer was utilizing temporary workers but learning that these temporary workers might not be receiving wages and benefits in accord with the collective-bargaining agreement, the union asked the company for the names and addresses of the temporary employees and the hourly rate and fringe benefits they received. The company refused to

provide the information stating that the temporary employees were not employees of the company and the union was not entitled to this information. The Board held that even assuming that the temporary employees were non-unit employees, “it is clear that information regarding individuals who are engaged in performing the same tasks as rank-and-file employees within the bargaining unit ‘relates directly to the policing of contract terms.’” Id. at 465, quoting *Globe Stores*, 227 NLRB 1251, 1253–1254 (1977).

Similarly, in *Island Creek Coal Co.*, supra, 292 NLRB at 490–491, the union sought budget reports which it thought contained information concerning past and prospective coal production. That information could have helped the union assess whether subcontracting of unit work was occurring and would influence its decision on whether to file a grievance. The Board found that by failing to provide this information, the employer violated Section 8(a)(1) and (5) of the Act.

Thus, based upon the record as a whole, it has been established that the Union needs the information to determine if Respondent has committed a violation of the CBA or the LOU and the information requested is relevant.

#### Confidentiality and Privilege

The finding of relevance and necessity does not end the question before me. Respondent claims that even if the information is relevant and necessary, Respondent was not obligated to produce it because it constitutes confidential trade secret or proprietary information. In *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979), the Court stated that there is no absolute rule relating to disclosure of information:

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. The duty to supply information under §8(a)(5) turns upon “the circumstances of the particular case” . . . and much the same may be said for the type of disclosure that will satisfy that duty.

A generalized contention that information is confidential or privileged because of business needs does not warrant complete refusal to provide that information. Rather, the parties must bargain in good faith to reach an accommodation of interests. See *SBC California*, 344 NLRB 243 (2005). The party asserting confidentiality has the burden of proof. *Postal Service (Main Post Office)*, 289 NLRB 942 (1988), enfd., 888 F.2d 1568 (11<sup>th</sup> Cir. 1989).

In its responses to the information requests, Respondent asserted that the information sought by the Union was considered Dole’s operational business decision—not subject to disclosure. In its answer to the complaint, Respondent asserted that the information sought was confidential trade secret and proprietary information relating to volume and pricing, that it was protected by attorney-client privilege and/or attorney work product, and that it violated third-party privacy rights. No evidence was offered in support of these confidentiality or privilege claims and, on that basis, I find no confidential or privilege warranted refusal to furnish the information.

#### **CONCLUSIONS OF LAW**

By failing and refusing to furnish the information set forth in complaint paragraphs 7, 8, 9, and 10, Respondent has engaged in unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

**THE REMEDY**

5 Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, it shall be ordered to produce the information and post and mail a notice to employees in both English and Spanish attached as the appendix. Mailing is a necessary remedy in this case as the work force moves from place to place harvesting various crops throughout the year. The Charging Party requests additionally that the Notice posting period be extended, that Respondent be required to toll the time limits for filing grievances regarding any further grievances arising from the requested information, that 10 the Notice be read to employees at the next reading of the seniority list, and that the description of Section 7 rights not refer to the right to refrain from engaging in Section 7 activities. I decline to recommend these additional remedies in that those ordered fully remedy the violations.

15 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>16</sup>

**ORDER**

20 The National Labor Relations Board orders that the Respondent, Bud Antle, Inc., Salinas Valley, Oxnard, Huron, and Imperial Valley, California, its officers, agents, successors, and assigns, shall cease and desist from refusing to bargain collectively in good faith with Teamsters 25 Local Union No. 890, International Brotherhood of Teamsters by failing and refusing to furnish information concerning subcontracting that the Union reflected in its letters of February 17, March 12, 26, and 29, and as itemized in paragraphs 7, 8, 9, and 10 of the complaint or 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.

30 Respondent shall take the following affirmative action necessary to effectuate the policies of the Act:

- 35 (a) On request, furnish the requested information in its possession;  
 (b) Within 14 days after service by the Region, post at its facilities in Salinas Valley, Oxnard, Huron, and Imperial Valley, California, copies of the attached notice both in English and Spanish marked "Appendix."<sup>17</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and 40 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

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45 <sup>16</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, as provided in Section 10.48 of the Rules, shall be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50 <sup>17</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."

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.

- 5 (c) Within 14 days after service by the Region, mail copies of the attached notice in English and Spanish to all bargaining unit employees who were employed by the Respondents at any time from the onset of the unfair labor practices found in this case until the date of this decision. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondents' authorized representative.
- 10 (d) Notify the Regional Director within 21 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 16, 2013

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Mary Miller Cracraft  
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

As harvesters of head lettuce, broccoli, cauliflower, and celery for Bud Antle, Inc., you are represented by Teamsters Local Union No. 890, International Brotherhood of Teamsters. The Teamsters requested that Bud Antle, Inc. provide them with information about the extent and nature of subcontracting during the 2012 spring harvesting season in order for the Union to process grievances on your behalf. We did not provide this information and have been found to have violated its duty to act in good faith when dealing the Union. The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post, mail, 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 refuse to bargain collectively in good faith with Teamsters Local Union No. 890, International Brotherhood of Teamsters by failing and refusing to furnish information concerning the extent and nature of subcontracting during the 2012 spring harvesting season in Salinas Valley, Oxnard, Huron, and Imperial Valley, California.

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

WE WILL, on request, furnish the information in our possession that was requested by the Union in its letters of February 17 and March 12, 26, and 29, 2012.

BUD ANTLE, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

1301 Clay Street, Federal Building, Room 300N  
Oakland, California 94612-5211  
Hours: 8:30 a.m. to 5 p.m.  
510-637-3300.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 510-637-3270