

Dover Hospitality Services, Inc. a/k/a Dover Caterers, Inc. a/k/a Dover College Services, Inc. a/k/a Dover Group of New York a/k/a Dover Group a/k/a Quick Snack Foods, Inc. and Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union. Case 29–CA–063398

May 31, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On February 22, 2013, Administrative Law Judge Mindy E. Landow issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief, and has decided to affirm the judge's rulings,¹ findings, and conclusions as amended,² and to adopt the recommended Order as modified.

We have amended the Conclusion of Law to include the Respondent's failure to respond in a timely manner to the Union's information request along with its failure and refusal to provide the requested information as the bases on which it violated Section 8(a)(5) and (1) of the Act. We have modified the judge's recommended Order, as set forth below, to conform to the amended Conclusions of Law and to the Board's standard remedial language. We have substituted a new notice to conform to the modified Order.

AMENDED CONCLUSION OF LAW

We substitute the following for the Conclusion of Law.

¹ The Respondent excepts to the judge's denial of its petition to revoke the Acting General Counsel's subpoena. This exception is unsupported by argument. In any case, our review of the record shows that the denial was not in error.

² In adopting the judge's conclusions, we agree with the judge that the Respondent did not satisfy its obligation to provide relevant requested information to the Union by providing certain documents to the Acting General Counsel on the eve of the hearing. It is well established that "the duty to supply relevant information is a duty to supply such information in a timely fashion . . . to the Union, not to the Board." *Geiger Ready-Mix Co. of Kansas City*, 315 NLRB 1021, 1033 (1994) (adopting judge's conclusion that employer unlawfully refused to provide union with requested relevant information despite fact that much of the information was introduced into evidence at the hearing); accord: *Walt Disney World Co.*, 359 NLRB No. 73, slip op. at 1 fn. 3, 17 (2013).

In considering the lawfulness of the Respondent's failure to promptly furnish the requested information, we do not rely on *American Benefit Co.*, 354 NLRB 1039 (2010), or *National Broadcasting Co.*, 352 NLRB 90 (2008), both of which were issued by a two-Member Board. See *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010); *Hospital Pavia Perea*, 355 NLRB 1300, 1300 fn. 2 (2010) (recognizing that the two-Member Board "lacked authority to issue an order").

"By failing to respond in a timely manner to the Union's request for information in its letter of August 3, 2011, and by failing to provide the Union with the information requested in that letter, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Dover Hospitality Services, Inc. a/k/a Dover Caterers, Inc. a/k/a Dover College Services, Inc. a/k/a Dover Group of New York a/k/a Dover Group a/k/a Quick Snack Foods, Inc., Plainview, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to bargain collectively with Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union by failing to respond in a timely manner to its requests for information and by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's employees in the following appropriate unit:

All regularly employed kitchen, dining room, bar, cafeteria, kiosk and cart employees employed by the Employer at the Suffolk County Community College Selden Campus and the grill employees employed by the Employer at the Suffolk County Community College Brentwood Campus, excluding, however, all cooks, custodians, university students, casual employees as defined in Article 2, office and clerical employees, supervisors and guards as defined in the Act."

2. Insert the following as paragraph 2(c).

"(c) Within 21 days after service by the Region, file with the Regional Director for Region 29 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."

3. Substitute the attached notice for that of the administrative law judge.

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 refuse to bargain collectively with Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union by failing to respond in a timely manner to its requests for information or by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our employees in the following appropriate unit:

All regularly employed kitchen, dining room, bar, cafeteria, kiosk and cart employees employed by us at the Suffolk County Community College Selden Campus and the grill employees employed by us at the Suffolk County Community College Brentwood Campus, excluding, however, all cooks, custodians, university students, casual employees as defined in Article 2, office and clerical employees, supervisors and guards as defined in the Act.

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

WE WILL furnish to the Union in a timely manner the information requested by the Union on August 3, 2011.

DOVER HOSPITALITY SERVICES, INC. A/K/A
DOVER CATERERS, INC. A/K/A DOVER COLLEGE
SERVICES, INC. A/K/A DOVER GROUP OF NEW
YORK A/K/A DOVER GROUP A/K/A QUICK SNACK
FOODS, INC.

Michael Berger, Esq., for the Acting General Counsel.
Dennis J. Romano, of Westbury, New York, for the Charging Party.

DECISION

MINDY E. LANDOW, Administrative Law Judge. This case is an outgrowth of a prior proceeding before the Board based upon an alleged failure and refusal to provide information necessary and relevant to the collective-bargaining process. As will be discussed below, the Board has previously concluded that the named Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to do so and ordered that such information be provided to the Union. The instant case involves the same principals, ongoing bargaining for a successor contract and an updated information request.

STATEMENT OF THE CASE

Based on a charge filed on August 23, 2011, by Local 1102 of the Retail, Wholesale & Department Store Union, United Food & Commercial Workers Union (the Union) in Case 29-CA-063398, the Regional Director for Region 29 issued a complaint and notice of hearing (the complaint) on November 2011, alleging that Dover Hospitality Service, Inc. (Dover Respondent) and five other entities (alleged as "a/k/a's")¹ engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with certain information necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of certain of Respondent's employees. The Respondent filed an answer denying the material allegations of the complaint and further asserting that none of the alleged entities listed as "a/k/a's" performed any work at the named locations relative to the instant matter, are not parties to any collective-bargaining agreement with the Union and that they have not employed any bargaining unit member for purposes of the collective-bargaining agreement between Dover and the Union.

A hearing with respect to the allegations of the complaint was held before me in Brooklyn, New York, on September 20, 2012.² As will be discussed in further detail below, no representative of Respondent appeared at that time. Based on the record adduced at the hearing, the brief filed by counsel for the Acting General Counsel,³ and other documentary submissions,⁴

¹ These additional named entities: Dover Caterers, Inc.; Dover College Services, Inc., Dover Group of New York; Dover Group and Quick Snack Foods, were not alleged as single or joint employers with or alter egos of Dover Hospitality Services, Inc.

² Unless otherwise noted, all dates are in 2012.

³ Hereafter referred to as the General Counsel.

⁴ As raised by the General Counsel at the outset of the hearing, on September 12, counsel for the General Counsel subpoenaed certain documents from the Respondent including (1) documents generally relating to the ownership and control of the five listed "also known as" entities; (2) all documents which had been provided by Respondent to the Union in response to the Union's information request of August 3, 2011; and (3) all correspondence sent by the Respondent to the Union regarding the Union's information request of August 3, 2011. Thereafter, Respondent timely filed a petition to revoke the subpoena (petition raising general objections, i.e., that the subpoena does not relate to any matter under investigation, is unreasonable in scope and overly broad, constitutes harassment and is unduly burdensome in seeking documents not relevant to this matter. Respondent further asserted that it had already provided certain documents responsive to items 2 and 3 of the subpoena to the Region. Respondent's general objections, as outlined

discussed below, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with its principal office and place of business in Plainview, New York, with operations at campuses at Suffolk County Community College located in Selden and Brentwood, New York, where it is involved in providing retail food services. Respondent has admitted that during the 12-month period preceding the hearing in this matter, a period which is representative of its operations generally, Respondent derived gross revenues in excess of \$500,000 and purchased and received at its New York locations goods valued in excess of \$5000 from other enterprises located within the State of New York, each of which enterprises had received those goods directly from points located outside the State of New York. It is admitted, and I find, that Respondent is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is also admitted, and I find, that the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE PRIOR BOARD DECISION

In *Dover Hospitality Services*, 358 NLRB 709 (2012), a prior case involving the Charging Party and the Respondent, the Respondent was found to have committed unfair labor practices substantially similar to those at issue here. In particular, the Board found that, by failing and refusing to provide the Union with information it had requested by letter on January 5, 2011, the Respondent had violated Section 8(a)(5) and (1) of the Act.⁵ In so concluding, the Board affirmed certain findings made by the administrative law judge which form relevant background

above, are unsubstantiated and insufficient to support its Petition. I find that items 2 and 3 of the subpoena seek documents arguably relevant to the matters under consideration here. To the extent such documents have not already been provided to the General Counsel, I accordingly deny the Respondent's Petition. The information sought by item 1 of the subpoena, i.e., documents showing ownership and control of the five named "also known as" entities raises questions of relevance particularly inasmuch as none of these entities are named as joint or single employers or alter egos of the principal named Respondent. However, I have concluded that Respondent's answer has raised certain questions pertaining to the relationship among these entities and the extent to which they conduct business at the facilities at issue here. The Board's standard in evaluating whether subpoenaed documents should be produced is a broad one. Sec. 102.31 of the Board's Rules and Regulations states that a subpoena shall be revoked if, "the evidence does not relate to any matter under investigation or in question in these proceedings." Here, based on the representations contained in Respondent's answer to the complaint, I cannot conclude that the material sought by the subpoena clearly does not relate to any matter under investigation or in question here. With regard to any contention that some of the documents sought do not exist or are unavailable, Respondent was obliged to make that information available to the General Counsel. Accordingly, the Respondent's Petition is denied in its entirety.

⁵ In that case, the status of Dover Caterers, Inc. and Dover College Services, Inc. as "also known as" entities was neither challenged nor litigated.

to the instant proceeding.

As the judge found, since 2005, the Union has been recognized as the collective-bargaining representative of certain food service employees employed at Suffolk County Community College at its Selden and Brentwood campuses. Such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which expired on January 31, 2010 (the 2010 agreement). Isaac (Butch) Yamali has been an owner of Respondent and responsible for the negotiation of contracts between Respondent and the Union. The ALJ, affirmed by the Board, found that on several occasions during the negotiation for a successor to the 2010 agreement, Respondent asserted that it could not afford to pay the wages and benefits set forth in the expiring collective-bargaining agreement and could not, therefore, meet the Union's demands for increases in these terms and conditions of employment. 358 NLRB 709, 711, 714.⁶ The Board found that on January 5, 2011, the Union had made a request for information that was relevant to substantiating Respondent's claim of inability to pay and that Respondent had ignored the Union's request and failed to provide any of the requested information. *Id.* at 4, 6. The information request, sent to Yamali by the Union's director of collective bargaining, Dennis Romano, sought the following information:

Annual tax returns Federal/State for years 2005–2009
Audited Income Statements and balance sheets for years 2005–2009
Copies of all W-2/W-3 for years 2005–2009

The letter sent by Romano specified that the information sought was "to verify your continued position at the bargaining table that the current labor agreement is an impediment to your continued existence at SCC Selden and Brentwood Campuses."

The administrative law judge further relied on Romano's testimony that he asked for the foregoing information in order to verify Yamali's assertions of not making a profit and the unaffordability of the current contract and any increases going forward; and that he consulted with the Union's accountant who would be more familiar with the sort of documents necessary to verify the Employer's assertions prior to making the information request.

III. THE CURRENT CASE

As of the date of the hearing, the parties had not reached agreement on a successor collective-bargaining agreement. I further note that there is no evidence that the Respondent had changed its position regarding its asserted inability to pay under the current contract or the Union's bargaining proposals. In furtherance of continuing bargaining, on August 3, 2011, Romano sent a letter addressed Yamali, which provides as follows:

Re: Renewal Collective Bargaining Agreement Negotiations

⁶ In particular, the administrative law judge found that: "Yamali, at two meetings, informed the Union that Respondent could not afford the current union contract, let alone any increases in the new contract. These assertions made on behalf of Respondent have consistently been held to convey an 'inability to pay.'" *Id.*, slip op. at 6 (citations omitted).

Between Local 1102 RWDSU/UFCW—and—Dover Hospitality Services, Inc., a/k/a Dover Caterers, Inc., a/k/a Dover College Services, Inc., a/k/a Dover Group of New York, a/k/a Dover Group, a/k/a Quick Snack Foods, Inc.

As a follow up to my January 5, 2011 letter, I am writing to notify you that the Union is requesting that the additional following information be provided during the current on-going negotiations between the parties:

1. Annual tax returns Federal/State for year 2010 for Dover Hospitality Services, Inc., Dover Caterers, Inc., Dover College Services, Inc., Dover Group of New York, Dover Group and Quick Snack Foods.

2. Audited Income statements and balance sheet for year 2010 for Dover Hospitality Services, Inc., Dover Caterers, Inc., Dover College Services, Inc., Dover Group of New York, Dover group and Quick Snack Foods.

3. Copies of all W-2/W-3 for year 2010 for Dover Hospitality Services, Inc., Dover Caterers, Inc., Dover College Services, Inc., Dover Group of New York, Dover group and Quick Snack Foods.

Again, this information is needed to verify your continued position at the bargaining table that the current labor agreement is an impediment to your continued existence at SCC Belden and Brentwood campuses.

In addition, the Union reserves its right to ask for additional information and to request that information from additional companies under your custody and control as it deems necessary to support your position in these negotiations.

Once I have had an opportunity to review this information I will provide additional dates for negotiations.

Thus, the instant information request differs from the prior one in two respects: it requests the information be updated to include the year 2010 and specifically lists certain “also known as” entities about which information is sought. Romano testified that the August 3 information request added additional “also known as” entities because the Union, through research, had reason to believe they were related to Dover Hospitality Services, Inc. For example, Romano testified that Quick Snack Foods, Inc. was Respondent’s vending operation at Suffolk Community College. Romano failed, however, to offer any specific reason for or particularized evidence as to why the other “also known as” entities were added to the Union’s information request.

There was no response to the Union’s information request for approximately 13 months.

On the morning of the date prior to the instant hearing, counsel for the Respondent called Romano and asserted that Respondent would provide the information sought. Romano replied that it was less than 24 hours prior to the date and time set for the unfair labor practice hearing and asked what information would be provided. Counsel for Respondent replied that the information provided would be the W-2 forms and Federal and state income tax forms for the year requested. Romano replied that that was not fully responsive to what had been requested in

his letter. Romano specifically asked about the audited income statements and counsel for Respondent replied that he did not have those. Romano replied that that was not acceptable.

As it happened, Respondent did not actually send any information to the Union; rather, it was forwarded to the regional office for Region 29 of the NLRB. Once the information was received, counsel for the General Counsel inquired as to whether the information had been sent to the Union and Respondent counsel responded that it had not been sent directly to the Union. The regional office then forwarded the information to the Union, stating it was doing so as a matter of courtesy; however, counsel for the General Counsel informed counsel for Respondent that it was Respondent’s obligation, under the Act, to provide the information directly to the Union.

Once having received the information through the auspices of the General Counsel, Romano confirmed that it was not wholly responsive to the information request, in any event. While, as represented, Respondent had sent the W-2 forms and Federal and State income tax returns for 2010, the audited income statements were not provided. Romano testified that, although he was not an accountant, he had reason to believe that such information would and did exist and that this belief was based on the fact that the Respondent conducted business in both the public and private sector where it would be required to submit bids before being selected. In connection with such bids, it can reasonably be assumed that Respondent possesses and would be required to submit such standard financial documents. In addition, as Romano testified, the Employer’s response fails to address the request for W-3 forms and no W-2 forms or other responsive information was provided for any of the “also known as” entities. The one income tax return that was provided was for an entity known as “Dover Gourmet Corp. & Subsidiary Dover Hospitality Services, Inc.” Thus, no income tax information was received for any of the “also known as” entities referenced in Romano’s information request and no response as to any of these other entities was received.

Later that evening, counsel for Respondent notified counsel for the General Counsel that it had produced all documents in its possession which were responsive to the Union’s information request, stated that it would not be appearing at the hearing and requested that the matter be “closed.”

The General Counsel has argued that the Respondent’s late and insufficient response to the Union’s information request constitutes a violation of the duty to bargain in violation of the Act.

Analysis and Conclusions

General Legal Principles

It is well settled that Respondent has a statutory obligation to provide the Union, on request, information that is relevant and necessary to enable the Union to intelligently and effectively carry out its statutory obligations as the employees’ exclusive bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *American Benefit Corp.*, 354 NLRB 1039 (2010); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). Respondent’s statutory obligation includes furnishing the Union with requested information related to contract negotiations.

Day Automotive Group, 348 NLRB 1257, 1262 (2006).

More particularly, as was found in the prior case involving these parties, Respondent's duty to bargain includes the obligation to provide the Union with requested information that would enable the Union to assess the validity of claims that Respondent made in contract negotiations. *National Extrusion & Mfg. Co.*, 357 NLRB 127 (2011).

Information that relates directly to employees in the bargaining unit and their terms and conditions of employment is presumptively relevant and Respondent must provide the requested information. *Boston Herald-Traveler Corp.*, 110 NLRB 2097 (1954), *enfd.* 223 F.2d 58 (1st Cir.1955); *Pfizer*, 268 NLRB 916, 918 (1984), *enfd.* 763 F.2d 887 (7th Cir. 1985).

However, where a union has requested information with respect to employees or matters outside the bargaining unit, the Union has the burden of demonstrating that the information is potentially relevant to its representative duties. *National Broadcasting Co.*, 352 NLRB 90, 97 (2008); *Ohio Power Co.*, 216 NLRB 987 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976). In particular, the Board has held that information about the financial condition of an employer is not presumptively relevant. *Nielsen Lithographing Co.*, 305 NLRB 697 (1991), *affd.* sub nom. *Graphic Communications Local 50B v NLRB*, 977 F.2d 1168 (7th Cir. 1992). As stated in *ConAgra, Inc. v. NLRB*, 117 F.3d 1435, 1438 (D.C. Cir. 1997) (citing *Ohio Power Co.*, supra):

Although the relevance of information concerning the terms and conditions of employment is presumed, no such presumption applies to an employer's information regarding its financial structure and condition, and a union must demonstrate that any requested financial information is relevant to the negotiations in order to require the employer to turn it over.

To meet this burden of establishing relevance, the Union need only demonstrate a reasonable belief based on objective facts that the requested information is relevant. *Disneyland Park*, 350 NLRB 1256, 1258 (2007). The Union is not required to show the precise relevance of the requested information to particular bargaining unit issues. *AK Steel Corp.*, 324 NLRB 173, 183 (1997). The burden for demonstrating relevance is not a heavy one, requiring only a broad, "liberal discovery-type standard." *Acme Industrial*, supra, 385 U.S. at 437; *American Benefit Corp.*, 354 NLRB 1039, 1050 (2010). In order to be relevant under this liberal standard, the information sought need not be dispositive of the issues between the parties, but must only have some bearing on the issues, showing a probability that the requested information would be of use to the Union in carrying out its representative functions. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105 (1991); *National Broadcasting Co.*, supra at 97.

Even absent a showing by the Union of probable relevance, Board law holds "that an employer is obligated to furnish requested information where the circumstances should put the employer on notice of a relevant purpose which the union has not spelled out." *KLB Industries, Inc.*, supra (quoting *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000)).

Further, a party's statements and bargaining proposals may

make other information relevant to negotiations. The Board has noted that if a party asserts a claim and then refuses to provide requested information to substantiate the claim, collective bargaining is frustrated and rendered ineffective. *Leland Stanford Junior University*, 262 NLRB 136, 145 (1982).

In *NLRB v. Truitt Mfg. Co.*, supra the Supreme Court held that an employer violated Section 8(a)(5) of the Act by refusing to provide the Union with information requested in order to substantiate the employer's claim that it could not afford to grant its employees the wage increase sought by the union and that such an increase would put the employer out of business.

The Court explained that:

Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. [Id. at 152–153.]

While no magic words are required to establish an obligation to provide general financial information, the obligation arises where, as has been previously found here, Respondent's statements and actions have conveyed an inability to pay. *Dover*, 358 NLRB, supra, slip op. at 6 (and cases cited therein); see also *Atlanta Hilton & Tower*, 271 NLRB 1600, 1602 (1984).

The General Counsel has alleged that Respondent's unexplained failure to respond to the Union's August 3, 2011 information request for a period of some 13 months constitutes a violation of its duty to bargain. I agree. It is well settled that under Board law, the duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). See also *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). ("An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all.") Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of Section 8(a)(5). *Woodland Clinic*, 331 NLRB 735, 737 (2000). Moreover, this has been found to be the case even where the underlying complaint alleges a blanket refusal to provide information rather than a delay in doing so. *Shaw's Supermarkets*, 339 NLRB 871 (2003);⁷ see also *Care Manor of Farmington*, 318 NLRB 330, 333–334 (1995).

⁷ In *Shaw's Supermarkets*, it was alleged that the respondent had failed and refused to provide relevant information. As is the case here, a portion of the requested information was provided shortly prior to the hearing and still other information was provided subsequent to the hearing. Nevertheless, the administrative law judge concluded that a violation of Sec. 8(a)(5), as alleged, had occurred, reasoning as follows: "The issue then is whether the Act was violated by the dilatory manner in which [the] requested information was turned over. Once a good faith demand is made for relevant information, it must be made available promptly and in useful form. Even though an employer has not expressly refused to furnish the information, its failure to make diligent effort to obtain or to provide the information 'reasonably' promptly may be equated with a flat refusal." 339 NLRB 875 (and cases cited therein).

As noted above, Respondent belatedly argued to the Union that some of the information sought does not exist. Assuming that to be the case (a matter which has not been proven and to which the General Counsel has offered some rebuttal testimony), the evidence shows that Respondent failed to notify the Union of that fact in a timely manner or explain why it would not have maintained such standard financial documents in the ordinary course of business.

Recently, the Board has clarified that under Section 8(a)(5) of the Act, a unionized employer must respond, in some manner, to a request for information, even when an employer may have a justification for not actually providing the requested information. *Iron Tiger Logistics, Inc.*, 359 NLRB 236, 237 (2012).⁸

As the Board noted, it had previously found 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.

Id. (citing *Columbia University*, 298 NLRB 941, 945 (1990)).

Consistent with this logic, in *Iron Tiger*, supra, a Board panel majority found that the employer had a duty to timely respond to the union's information request, even where the information sought was ultimately found not to be relevant.

Here, Respondent's answer raises the issue of the applicability of the Union's information request with regard to the "also known as" entities. Assuming that the Employer were to take the position, as indicated by its answer to the complaint, that it was under no obligation under the Act to provide such information regarding those other entities to the Union, it was nevertheless obliged to advise the Union, in a timely manner, of that position and the underlying facts which support it.⁹ The same obligation obtains with regard to information which Respondent may claim or has claimed does not exist. Clearly, it did not do so.

Moreover, as the General Counsel has noted, Respondent did not satisfy or cure any delay in its obligation to provide the Union with information by subsequently, on the eve of trial, providing certain items to the General Counsel. The Respondent's bargaining obligation is with the Union. In this regard, the

⁸ In that case, a Board panel majority found that the employer had a duty to timely respond to the union's information request, even though the information sought was ultimately found not to be relevant. That is not an issue here, where (as has been previously found by the Board) the financial information sought by the Union is clearly relevant to the Employer's claim of inability to pay.

⁹ As to the other recently-named "also known as" entities, the General Counsel has requested that I draw an adverse inference from Respondent's failure to comply with item 1 of its subpoena which seeks documents showing the ownership and control of those named in the complaint. Under the particular circumstances of this case, I decline to do so. See *CPS Chemical Co.*, 324 NLRB 1018, 1019 (1997), enf. 160 F.3d 150 (3d Cir. 1998) (absence of documents did not prevent the Respondent from proving any relevant part of its case).

Board has held that although information may be available to a union through other means, employer is not relieved of its obligation, under the duty to bargain, to supply such information directly to the collective-bargaining representative of its employees. To the contrary, the duty of an employer to provide relevant information in its possession is not excused by the fact that it may be obtained elsewhere. *Kroger Co.*, 226 NLRB 512, 513-514 (1976); *People Care, Inc.*, 327 NLRB 814, 824 (1999); *Orthodox Jewish Home for the Aged*, 314 NLRB 1006, 1008 (1994).

Here, Respondent has failed to offer any legally sufficient explanation, supported by probative evidence, for its non-response and subsequent delay in providing information relevant to its ongoing claim of "inability to pay" to the Union. Accordingly, I find that by failing to respond to the Union's request for information, the relevance of which has previously been established, and is reaffirmed by the evidence here, Respondent has failed and refused to bargain collectively and in good faith in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to provide the Union with the information requested in its August 3, 2011 letter, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully refused to supply information as set forth in the complaint, it is recommended that Respondent, to the extent it has not done so, be ordered to furnish such information to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, Dover Hospitality Services, Inc. a/k/a Dover Caterers, Inc. a/k/a Dover College Services, Inc. a/k/a Dover Group of New York a/k/a Dover Group a/k/a Quick Snack Foods, Inc., Selden and Brentwood, New York, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Local 1102 of the Retail Wholesale & Department Store Union, United Food and Commercial Workers Union (the Union) by failing and refusing to furnish information relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in the following

¹⁰ 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.

appropriate unit:

All regularly employed kitchen, dining room, bar, cafeteria, kiosk and cart employees employed by the Respondent at the Suffolk County Community College Selden Campus and the grill employees employed by the Respondent at the Suffolk County Community College Brentwood Campus, excluding, however, all cooks, custodians, university students, casual employees as defined in Article 2, office and clerical employees, supervisors and guards as defined in the Act.

(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) Provide the Union with the information requested by its letter of August 3, 2011.

(b) Within 14 days after service by the Region, post at its Selden and Brentwood, New York facilities copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

forms provided by the Regional Director for Region 29, 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 August 3, 2011.

tional 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."