

**Bud Antle, Inc. and Teamsters Local Union No. 890,
International Brotherhood of Teamsters.** Case
32–CA–078166

June 26, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On January 16, 2013, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Acting General Counsel, the Respondent, and the Charging Party each filed exceptions. The Respondent and the Charging Party also filed supporting briefs and the Charging Party filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions, to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.²

¹ In adopting the judge’s finding that the Respondent violated Sec. 8(a)(5) and (1) by failing to provide information requested by the Union regarding subcontracting, we find that the Union established the relevance of this information under the legal standard set forth in *Disneyland Park*, 350 NLRB 1256, 1257–1258 (2007):

[W]here the information requested by the union is not presumptively relevant to the union’s performance as bargaining representative, the burden is on the union to demonstrate the relevance. A union has satisfied its burden when it demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant.

Information about subcontracting agreements . . . is not presumptively relevant. Therefore, a union seeking such information must demonstrate its relevance.

The Board uses a broad, discovery-type standard in determining the relevance of requested information. Potential or probable relevance is sufficient to give rise to an employer’s obligation to provide information. To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances.

[Footnotes and citations omitted.] We do not rely here on *Disneyland Park*’s application of this standard to the facts of that case.

² We shall amend the remedy and modify the judge’s recommended Order to conform to the Board’s standard remedial language, and as follows. We shall include the Respondent’s Yuma, Arizona location as a notice-posting location. We shall require the Respondent to mail notices to all current and former employees employed by the Respondent at any time from the onset of the unfair labor practices until the date the notices are mailed. See *Graphic Communications Workers Local 735-S (Quebecor Printing)*, 330 NLRB 32, 35–36 (1999). This group is the appropriate one to receive a mailing where, as here, mailing is ordered on the ground that posting alone will not adequately communicate the notice to employees. We shall also add a notice-reading requirement, for the reasons discussed in the “Amended Remedy” section. We otherwise deny the Union’s request for special remedies. We shall substitute a new notice to conform to the Order as modified.

AMENDED REMEDY

Typically, the Board orders a respondent employer to post the remedial notice at places in its facility where notices to employees are customarily posted. In accordance with *J. Picini Flooring*, 356 NLRB 11 (2010), the Board additionally orders distribution of the notice electronically if the respondent customarily communicates with its employees by such means. Here, the judge additionally recommended that the notice be mailed to employees because “the work force moves from place to place harvesting various crops throughout the year.” No party disputes this finding, and we agree with the judge that notice-mailing is appropriate here. Because the Respondent does not maintain any facilities to which all unit employees report, notice-posting alone is insufficient to ensure that employees will see the notice, as the judge found. See *Chino Valley Medical Center*, 359 NLRB 980, 981 fn. 4 (2013).

The Charging Party further requested that the notice be read to employees when they gather at the start of the harvest at each location for the reading of the seniority list. The judge denied this request, finding that the remedies ordered “fully remedy the violations.” We disagree with the judge and find merit in the Charging Party’s request. Unit employees harvest crops in Oxnard, Huron, and Salinas Valley, California, at various locations in California’s Imperial Valley, and in Yuma, Arizona. These harvests take place at different times of the year, and unit employees move from place to place harvesting crops throughout the year at the Respondent’s various far flung harvesting locations.³ Although mailing the notice to each employee’s last known address will increase the likelihood that employees will see it, many unit employees may not reside at that address at the time the notices are mailed. Unit employees do, however, gather as a group for the reading of the seniority list at each harvesting location.⁴ Ordering that the notice be read aloud at those gatherings is consistent with the Respondent’s established method of communicating with employees, and we find that it is necessary to effectuate the policies of the Act because the notice cannot otherwise be “ade-

³ We take administrative notice that Salinas, California, is approximately 257 and 574 miles from Oxnard, California and Yuma, Arizona, respectively. These distances are taken from Google Maps, a source “whose accuracy cannot reasonably be questioned,” Fed.R.Evid. 201(b)(2), at least for determining approximate distances. See *McCormack v. Hiedeman*, 694 F.3d 1004, 1008 fn. 1 (9th Cir. 2012); *Rindfleisch v. Gentiva Health Systems, Inc.*, 752 F.Supp. 2d 246, 259 fn. 13 (E.D.N.Y. 2010), and cases cited there.

⁴ Experienced employees bid on crew assignments by seniority; this process is referred to as the “reading of the seniority list.” The record shows that applicants also appear at these gatherings to obtain work.

quately communicated” to employees. *J. Picini Flooring*, above, slip op. at 2.

ORDER

The National Labor Relations Board orders that the Respondent, Bud Antle, Inc., Salinas Valley, Oxnard, Huron, and Imperial Valley, California, and Yuma, Arizona, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Local Union No. 890 (the Union) 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 unit employees.

(b) Failing and refusing to provide the Union with the information described in the Union’s February 17 and March 12, 26, and 29, 2012 written requests.

(c) In any like or related manner interfering with, restraining, or coercing its 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) Furnish to the Union in a timely manner the information requested by the Union on February 17 and March 12, 26, and 29, 2012.

(b) Within 14 days after service by the Region, post at its facilities in Salinas Valley, Oxnard, and Huron, California, in California’s Imperial Valley, and in Yuma, Arizona, copies of the attached notice marked “Appendix” in both English and Spanish.⁵ 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 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, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with 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.

(c) Within 14 days after service by the Region, duplicate and mail, at its own expense, after being signed by the Respondent’s authorized representative, copies of the

attached notice marked “Appendix” in both English and Spanish to all current and former employees employed by the Respondent at any time from February 23, 2012, until the date the notices are mailed.

(d) At the next scheduled reading of the seniority list at the Respondent’s harvesting locations in Salinas Valley, Oxnard, and Huron, California, in California’s Imperial Valley, and in Yuma, Arizona, read aloud, in English and Spanish, the attached notice to the unit employees. The notice shall be read by a responsible management official or by a Board agent in the presence of a responsible management official.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 32 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.

APPENDIX

NOTICE TO EMPLOYEES

POSTED AND MAILED 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, 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 fail and refuse to bargain collectively with Teamsters Local Union No. 890 (the Union) 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 unit employees.

WE WILL NOT fail and refuse to provide the Union with the information described in the Union’s February 17 and March 12, 26, and 29, 2012 written requests.

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 February 17 and March 12, 26, and 29, 2012.

BUD ANTLE, INC.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted and Mailed by Order of the National Labor Relations Board” shall read “Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

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 National Labor Relations Act (the Act¹) by failing to provide information that was requested by Teamsters Local Union No. 890, International Brotherhood of Teamsters (the Union) in order to process grievances.² 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, 2012.³

On the entire record, including my observation of the demeanor of the witnesses,⁴ 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

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.

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

² 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.

³ All dates are in 2012, unless otherwise referenced.

⁴ 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.

II. BARGAINING RELATIONSHIP⁵

The parties have had a collective-bargaining relationship for about 50 years⁶ 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-agricultural⁷ 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].

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.

⁵ The allegations regarding the parties' bargaining relationships were admitted at hearing for purposes of this proceeding only.

⁶ 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.

⁷ 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.

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 complaint⁸ 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 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:

- (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
- (3) The common defense prong: whether a respondent would raise the same or similar defenses to both the untimely and

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

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.

III. INFORMATION REQUESTS

The General Counsel and the Union contend that the information requested⁹ 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.

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.*, 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), enf. 531 F.2d 1381 (6th 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

⁹ 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.

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 (9th 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”.¹⁰

1. Hours worked each day by each labor contractor or “custom harvesters” crew engaged in harvesting celery under the Dole label.

2. Number and type of boxes harvested each day by each la-

bor 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.

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.

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.

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 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 each farmer because Respondent harvests on some fields owned and controlled by individual farmers.

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 nonunit 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 requested a list of farmers who utilized nonunit 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.

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

¹⁰ 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.

abandonment for Heredia dated May 6, 2010, was attached. As to the information request, Respondent stated that the information was not relevant to “this 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 email 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 email 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 need all of the information requested in the original grievance.” Rodriguez responded to the email 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 any of the information requested because, “I didn’t see any relevance to [the Juan Heredia] case.”

March 12 Request

On March 12,¹¹ 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, 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*,¹² 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.
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 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 Yu-

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

¹² Other information was requested by the Union pursuant to the March 4 grievance. 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.

ma/Imperial Valley 2011/2012 Harvesting season, and the crews assigned to each farmer.

Conle explained that the Union had received information that on 2 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 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 and labor contractors or custom harvesters would indicate whether subcontracting was 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 nonunit 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 nonbargaining 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*,¹³

1. Hours worked each day by each labor contractor or “cus-

¹³ 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.

tom-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.

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 nonunit 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 1-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 badly¹⁴ 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:¹⁵

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.
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.
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.
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.
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

¹⁴ 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.

¹⁵ 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.

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.

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 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.

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 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 nonunit employees and the crews assigned to each farmer was necessary, according to Conle, because unit crews and contractor crews had been 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.

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 nonbargaining 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 com-

pany 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 nonunit 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 (11th 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.

CONCLUSION 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

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 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.

[Recommended Order omitted from publication.]