

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 34**

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In the matter of:

CONNECTICUT LIGHT AND POWER  
COMPANY D/B/A EVERSOURCE ENERGY

Case No. 01-CA-169804

and

INTERNATIONAL BROTHERHOOD OF,  
ELECTRICAL WORKERS, LOCAL UNION NO. 420

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**RESPONDENT CONNECTICUT LIGHT AND POWER'S POST-HEARING BRIEF**

**I. INTRODUCTION**

Respondent Connecticut Light and Power Company d/b/a Eversource Energy (“CL&P,” the “Company” or “Respondent”) hereby submits its Post-Hearing Brief in the above-referenced matter. In this matter, the National Labor Relations Sub-region 34 (the “Region”) and the International Brotherhood of Electrical Workers, Local Union No. 420 (“Local 420” or the “Union”) allege that Respondent violated 8(a) (1) and (5) of the Act by failing to provide certain information, including but not limited to third-party contractor costs, which is confidential and proprietary financial information. As discussed more fully herein, Respondent asserts that it has not violated the Act in anyway because: (1) at no time during recent negotiations did it plead any inability to pay and, therefore, it has no obligation to provide confidential financial information; (2) even if the Union demonstrated some relevance for third-party contractor costs information, Respondent’s interests in protecting its confidential financial information outweighs the Union’s

need for the information. Further, *assuming arguendo* that Respondent did violate the act by not providing confidential third-party contractor costs information, the remedy for such violation should not require the production of such information where the Union has no further need for such information. Finally, no production of any documentation should be required where negotiations have concluded and the Union's need for any such information is moot.<sup>1</sup>

Accordingly, Respondent respectfully requests that the Administrative Law Judge find that the Region's Complaint and Union's unfair labor practice charge are without merit and/or should be dismissed.

## **I. RELEVANT FACTS**

CL&P and Local 420 are subject to a collective bargaining agreements, commonly referred to as Blue Book and Green Book contracts which expired on June 1, 2016. Jt. Ex. 1. Those contracts contain clear provisions which specifically give the Company the right to use contractors to do work regularly performed by employees covered by the contracts so long as there is no layoff of bargaining unit employees. Id. The actual language in the books is as follows:

### **BLUE BOOK**

#### **Article XVI - CONTRACT WORK**

##### **1. When Contracting Out is Not Allowed**

Work regularly performed by employees covered by this Agreement will not be contracted out if it would result in loss of continuity of employment or opportunities for permanent promotions to job classifications covered by this Agreement.

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<sup>1</sup> It should be noted that Respondent does not dispute that all other information requested by the Union, except for the third-party contractor information is presumptively relevant, and should have been provided in due course. Further, as described herein, Respondent did provide information in response to certain requests. However, Respondent reserves its right to assert that the remedy to produce any such information is unnecessary and improper because the need for such information is moot. See Section III(D).

And, in the Green Book the language is as follows:

**GREEN BOOK**

**ARTICLE X, General Provisions**

**Section 10**

The Company agrees that it will not have work done by contract which is usually done by employees where such contracts will be accompanied by a layoff or reduction of hours in the working schedule or where men capable of doing the work are on layoff, have recall rights, and are readily available. Where contractors employing I.B.E.W. members are readily available and qualified to perform such work, they will be given any contract involving live wire work, to the extent permitted by law, and, all things being equal, will be given preference for other work usually done by employees, to the extent permitted by law.

In accordance with these contractual provisions CL&P exercised its right to subcontract work entered into a contractor relationship with Asplundh Construction Corp. (“Asplundh”) to have Asplundh do restoration, operation and response to “trouble” on CL&P’s distribution lines. There has been no lay off of any bargaining unit employee, no loss of opportunities for permanent promotions and Asplundh is a contractor who employs IBEW Local 42 members to perform this contract work. Indeed, this was the first time that CL&P had used contractors in this manner and was unique from how it had used contracts in the past. Tr. pp. 259, 333.

In May 15, 2014, the Union filed a charge alleging, “On or about March 7, 2014 the Union filed an information request with [CL&P] seeking information necessary for to administration of the collective bargaining agreements, Blue Book and Green Book. See Res.Ex. 3. On May 9, 2014, [CL&P] notified the Union by letter that it was refusing to provide the information requested by the Union.” The specific information requested in the March 7<sup>th</sup> letter which CL&P did not respond to was: “The dollar amount by hourly wages, any overtime hours worked, money agreed to by contract and any other monetary remuneration the Company plans on spending on said contractor.” CL&P did not furnish this information as it was confidential

financial information and wholly irrelevant to the bargaining process during the middle of a contract. Upon receipt of the Charge, it was investigated by the Region and CL&P submitted a position statement detailing the legal support for its refusal to provide the information. In summation, CL&P cited Detroit Edison Company and Local 223, Utility Workers of America, 314 NLRB 1273 (1994) as its support for the position. See Res.Ex. 4. Specifically, CL&P wrote in its position statement:

This case is almost identical to the case of *The Detroit Edison Company and Local 223, Utility Workers of America*, 314 NLRB 1273 (1994) wherein the Board dismissed a complaint against the Employer when it refused to furnish information requested by the union with regard to the cost of the outside contractor's used by the Employer. In that case, as in this one, the contract had a provision which allowed work customarily done by employees to be contracted out if it did not result in the layoff of employees. The Board, in dismissing the complaint stated: "given the agreements of maintenance of unit employment levels and the Respondent's acknowledged freedom to make unilateral subcontracting decisions – subject only to the contractual conditions mentioned above – the requested subcontractor cost data simply had no potential linkage to any bargaining which the Union could demand on behalf of the unit employees at or near the time of its information request." *Id.* at. 1275.

For all of the above reasons, the instant charge should be dismissed.

See Res.Ex. 4. In response to CL&P's position statement, it is undisputed that Local 420 withdrew its charge and that the Region decided not pursue a Complaint.

Subsequently, the parties entered into negotiations for a successor agreement. One of the key issues during negotiations was the Company proposal to establish a Response Specialist Organization, similar, but more expanded, than the Troubleshooter organization that it had contracted out to Asplundh in 2014. The Company explained that its need to establish this Response Specialist Organization was not based on labor costs; rather it was based on the need to provide expanded service to its customers. Tr. 263.

Additionally, during the course of negotiations, Local 420 made various information requests including information requested in writing on December 7 and 8, 2015 and February 1, 2016.

See Jt.Ex. 5-6. The information requested included the following:

- Contractor list for period June 1, 2013 to present;
- Address list for bargaining unit employees;
- 2013, 2014 and 2015 Fringe Benefit Breakdown;
- Straight-time hourly rate and 1% of annual;
- Expense plan breakdown 2013-2015;
- Shift premium cost and Summary Premium cost 2013-2015;
- Number of meals and Meal Reimbursement cost 2013-2015;
- List of all employees currently on special rates – Article V/Red Circle (Blue);
- All contractor hours and costs (dollars) of any and all contractors used to perform the work for the following classifications for the years 2012, 2013, 2014, 2015 and once 2016 begins, keep the information updated on an end of month cycle;
  - Troubleshooters
  - Lineman (including Transmission Linemen)
  - Electricians (including General Operating)
  - Meter Service
  - Storeroom
  - Building Maintenance/Janitorial
- The Names of all contractors mentioned above
- Organizational Charts
- Present Job Descriptions
- All manpower requests for 2012, 2013, 2014 and 2015 (PVR's).

See Jt.Ex. 5-6. For all of the above-referenced information, Local 420 provided that such information was necessary for “2016 Eversource Negotiations; and, with respect to the contractor costs information, such information was necessary so that Local 420 could “proceed with wage and benefit proposals.” Id.

In response to the Union’s requests, CL&P provided most information. The only information that it did not provide was: fringe benefit breakdowns; list of employees on special rates; current working schedules; present job descriptions; and manpower requests.<sup>2</sup> Tr. 250-255. Additionally, CL&P provided certain contractor information except for contractor costs

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<sup>2</sup> See footnote 1.

information, which it objected to providing because it constituted confidential financial information. Id. As the Company's Manager for Labor Relations, Joseph Picone testified at the hearing before the Administrative Law Judge, CL&P regarded this information as confidential because the manner in which the contractors was being used was unique to the company and the potential of disseminating contractor costs information could compromise bidding for future contractors and/or put the contractor and the company at a disadvantage during the bidding process. Tr. 266-67, 273. Further, the Company had no interest in sharing its financial plans and/or financial information key to how it conducts its business. Tr. 266-67, 273.

Notwithstanding the Company's objection to providing financial information, the Union continued to make multiple proposals regarding the wage rate that would be provided to employees working in the new Response Specialist classification. In fact, the Union admitted at hearing that the reason it wanted the contractor costs information was so that it could see what the contractor was paying its employees and make corresponding proposals for its own members. Tr. 191. Specifically at hearing, the Union's Business Manager Joseph Malcarne's testimony was as follows:

Q (By Mr. Allen): If you knew what the contractors were paying its employees, you could ask for your members to have similar wages?

A (Mr. Malcarne): If I knew the company was paying the contractors

Q: Yes. And the contractor employees, correct?

A: Yes.

Tr. 191. However, the Union had information related to what the contractors paid its employees because the contractor was subject to a collective bargaining agreement with I.B.E.W. Local 42, which the Union had reviewed. Tr. 191-92. Further, the Union was able to formulate wage

proposals for the Response Specialist classification based on its review of what other utilities, such as ConEdison, were paying its Response Specialists. Tr. 196. In any event, the Union and Company were able to negotiate a wage rate for the Response Specialist, which was ratified, and that made the Response Specialist the highest paid classification in the bargaining unit. Tr. 198.

Upon the parties concluding negotiations, there were various implementation details that needed to be discussed. However, the wage rate and benefits for all classifications in the bargaining unit, including the Response Specialists have been resolved and there exists no remaining economic issues outstanding.

## **II. LEGAL ARGUMENT**

### **A. Respondent Has No Obligation To Provide Confidential Financial Information Where It Has Not Pled Any Inability to Pay**

As an initial matter, the Company asserts that it has no obligation to provide the third-party contractor costs information because it constitutes confidential financial information exempt from disclosure as the Company have never pled an inability to pay for any union contract proposal. Moreover, there is absolutely no evidence on the record to demonstrate that the Company decision to subcontract was motivated by controlling labor cost, which might give rise to an inference that the Union may need this information to provide competitive proposals. Simply, where the record is void of such an inference and where the information sought is, on its face, clearly financial information, the Administrative Law Judge should rightly find that the Company did not violate the Act by refusing to provide the third-party contractor costs information.

Indeed, the seminal case in this regard is Nat'l Labor Relations Bd. v. Truitt Mfg. Co., 351 U.S. 149 (1956), where the Supreme Court found that if an employer is claiming an inability

to pay, it may, under certain circumstances, be required to substantiate that claim. However, the Court further held that the requirement to provide financial information will be evaluated on a case-by-case basis as the Court stated:

We agree with the Board that a refusal to attempt to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith... We do not hold, however, that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employees are entitled to substantiating evidence. Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met.

Nat'l Labor Relations Bd. v. Truitt Mfg. Co., 351 U.S. 149, 153-54, (1956). Since Truitt Mfg., the Board has consistently held that if an employer is not claiming an inability to pay, it is under no obligation to provide certain financial information. Further, the Board's application of this holding has emphasized 'a distinction between asserting an inability to pay, which triggers the duty to disclose, and asserting a mere unwillingness to pay, which does not.' Media Gen. Operations, Inc., d/b/a Richmond Times-Dispatch & Graphic Commc'ns Int'l Union, Local 40-n, AFL-CIO, 345 NLRB 195, 197 (2005), citing Lakeland Bus Lines, Inc. v. NLRB, 347 F.3d 955, 960-961 (D.C. Cir. 2003), denying enf. Lakeland Bus Lines, 335 NLRB 322 (2001); Honaker, Charles E., 147 NLRB 1184, 1188 (1964) (Respondent made it clear that it was not pleading inability to pay, and therefore was under no obligation to make known the author of the surveys, or to provide the other financial data requested by the Union).

Here, there is no debate that the information sought clearly constitutes company financial information. Further, the Region, represented by the National Labor Relations Board Counsel ("Board Counsel") and Union have offered no evidence to dispute that such information is confidential. More importantly, there is absolutely no evidence on the record that the Company ever raised any defense that it was unable to pay for any of the Union's contract proposals.

Rather, the Company's Manager for Labor Relations expressly confirmed that the Company had represented that its use of third-party contractor was far more expensive than utilizing bargaining unit members to perform the Response Specialist functions. Tr. p. 263. The Union also confirmed this fact. Tr. p. 192. And, this fact has never been rebutted by the Board Counsel.

Additionally, there is no evidence on the record to infer that Respondent's use of third-party contractor was based on labor costs. If there were, the Union might have some claim that it needed the contractor costs information in order to make a competitive proposal. This, however, was not the case. The Company articulated that its motivation to establish the Response Specialist classifications were based on its customer service driven goals to provide: (1) a single Respond and Restore roster governed by a single contract/agreement; (2) a 24x7x365 "boots-on-the-ground" presence of qualified "Response Specialists" at the Company facilities; and (3) an expressly defined Response Specialist job description that includes expanded job duties beyond those historically performed by the Troubleshooter job classification. In this light, it is undisputed that the Company never gave the Union any indication that it was unable to pay the wages proposed by the Union for such work. Simply, where the third-party financial information falls outside the bargaining unit, the information requested by the Union is akin to wage information of other non-represented bargaining unit employees and/or similarly situated confidential financial information that the Company customarily would not be required to produce. The contractor costs information should be treated in the same vein. The Union's request for information related to contractor costs information must accordingly be denied and the Administrative Law Judge should find that Respondent did not violate the Act by refusing to provide such information.

**B. Respondent's Right To Protect Its Confidential Financial Information  
Outweighs the Union's Need for Contractor Costs Information**

Assuming arguendo that the Union's access to company financial information is not precluded as discussed above, the record unequivocally demonstrates that the Company right to protect its confidential financial information outweighs the Union's need for the contractor costs information. In fact, the Board has established that a union's request for subcontractor information is presumptively not relevant and, therefore, the burden is upon the Union to demonstrate such relevance. Detroit Edison v. NLRB, 440 U.S. 301, 315, 318-320 (1979); see also United States Postal Serv., 352 NLRB 1032 (2008).

For example, in United States Postal Serv. & Am. Postal Workers Union, Phoenix Metro Area Local, AFL-CIO, 352 NLRB 1032 (2008), the union sought subcontractor information from the Postal Service, but it refused on the basis that the parties has a provision in their collective bargaining agreement that gave the Postal Service "the right to subcontract any work[] of the unit out," as long as it gave notice to the union. The Board held that the Postal Service did not violate the Act.

It is well established that 'subcontracting information... is not presumptively relevant and therefore a union seeking such information must demonstrate its relevance.' ... In the matter before me, I am of the view that as the requested Form 7468A concerns only the "subcontracting" of the Sun City Route, it is not presumptively relevant. As the National Union has specifically relinquished to the Respondent the exclusive authority to subcontract delivery routes (HCR) under 'temporary contracts' ... it is even more obvious that this issue is not presumptively relevant... Further, I conclude that the Union's "generalized conclusory explanation of relevance is 'insufficient to trigger an obligation to supply information that is on its face not presumptively relevant.'

(internal citations and quotations omitted). Similarly, In Ingham Reg'l Med. Ctr. & Local 459, Office & Prof'l Employees Int'l Union, AFL-CIO, 342 NLRB 1259, 1262 (2004) the union filed

a charge alleging, *inter alia*, that the employer violated Section 8(a)(1) of the Act by refusing to provide subcontracting information. The employer argued that it was under no obligation to provide such information because the collective bargaining agreement between the parties specifically reserved the right to subcontract bargaining unit work to the employer, provided that it gives the union 60 days advanced notice. The Board agreed.

The Board has held that subcontracting information like that requested by the Union is not presumptively relevant and therefore a union seeking such information must demonstrate its relevance...The finding made above that Respondent had no duty to bargain about the decision to subcontract means that the Union cannot demonstrate the relevance of the requested information. I find, therefore, that the Respondent's failure to provide all the requested information is not a violation of the Act.

(internal quotations omitted).

In this case, the Board Counsel and Union have argued that the contractor costs were relevant to negotiations because the Union would have used that information to formulate wage proposals for the Response Specialist classifications. However, the mere demonstration of relevance does not entitle the Union to the information. Nor does it establish a duty for Respondent to provide such information provided that it asserts confidentiality concerns regarding the information. The Board has, in fact, found that employers must be provided the opportunity to demonstrate a legitimate concern for confidentiality interests that may be compromised by disclosure. *See Detroit Edison v. NLRB*, 440 U.S. 301, 315, 318-320 (1979); *see also United States Postal Serv.*, 352 NLRB 1032 (2008). Moreover, where Respondent has asserted its right to preserve confidentiality, those rights and interests must be weighed against the Union's legitimate need to the information. *United States Postal Serv.*, 352 NLRB 1032 (2008) ("Where an employer has raised issues of asserted confidentiality, the Board first determines whether the employer has established legitimate and significant confidentiality

interests and, if so, then balances those interests against the union's need for the requested information.”). In this case, the need to protect Respondent’s confidentiality interests weigh heavily against the Union’s desire to see the information and any necessary dissemination of same.

As an initial matter, Respondent has presented sufficient evidence to demonstrate that the contractor costs information sought is legitimate confidential information. As Respondent’s Manager for Labor Relations explained, the dissemination of the contractor costs information could adversely impact not only the Company but also the contractor. First, the release of this information could adversely affect the Company’s ability to bid in future contracts, where other subcontractors could manipulate the costs information to undercut its bids for service to the Company. Second, the release of this information essentially disseminates the contractor’s business plan, which details the contractors’ capital costs, revenue and other financial information, thereby providing its competitors with potential competitive advantage in subsequent bidding processes. As such, the information sought contains sensitive information that the Company uses in its financial analysis and future dealings, which Respondent has a legitimate and substantial interest in remaining “confidential” and proprietary.

The Union and Board Counsel presented absolutely no evidence to rebut the legitimacy of the Company’s confidentiality concerns. The only evidence submitted included contractor costs information that had been provided to the Union in 2012. The Board Counsel likely will argue that the fact the Company provided this information in the past is indicative that the information cannot be regarded as confidential in this case. This overly conclusory argument ignores the fact that the services that the Company contracted for in this case were unique. The Company had never used an outside contractor in this manner to perform work of this magnitude

and central to its operations. The contractor costs in this dispute are subject to a separate contract, a separate business need and specifications and a completely separate business purpose. In this light, the information sought now versus the information provided in 2012 does not derive from the same operative facts and are, thus, not comparable or similarly situated.

Given that the Company has established its legitimate right to protect its confidentiality concerns, the analysis must then turn to whether the Union has demonstrate a viable need for the contractor costs information that outweighs Respondent's concerns. However, the record demonstrates that Union has failed to demonstrate that need. Notably, this is not the case where his Honor must conduct this analysis prospectively and speculate whether the Union may actually need this information. Indeed, his Honor has the benefit of hindsight and the actual facts attendant to the parties' negotiations. The Union Business Manager's own testimony unequivocally demonstrates that the Union did not need the information and was in no way prejudiced by not having the information sought. As testified to at hearing, the Union had actual knowledge of the wage rates for the contractor employees performing the disputed work *vis a vis* its review of the collective bargaining agreement between its brother local (IBEW, Local 42) and the contractor Asplundh. Further, it was able to base and formulate its proposals on its knowledge of what other utilities were paying its respective response specialists. And, in the end, the Union was able to negotiate a wage rate for the Response Specialist that is the highest wage rate for any classification in the bargaining unit. This case, therefore, embodies the time-old distinction between "needs" and "wants." While the Union may want the information (for no identifiable purpose), it did not need the information sought for purposes of representing its members in recent collective bargaining negotiations. In this light, the Administrative Law Judge should justifiably find that the record clearly establishes that the Union's expired "need"

for the contractor costs information could not outweigh Respondent's legitimate confidentiality concerns.

**C. The Union Has Not Demonstrated The Relevance and On-Going Need For Confidential Contractor Cost Information Where Negotiations Have Concluded**

Even *assuming arguendo* that Respondent was found to have violated the Act by not providing information related to the contractor costs, the Union cannot demonstrate the relevance and/or on-going need for same where negotiations have concluded. Accordingly, in assessing what remedy to provide if there was a violation, the Administrative Law Judge must also weigh whether Respondent confidential concerns outweigh the Union's need for the information now, after negotiations have concluded. This answer must be "no." The Union articulated no need for the information or how it would use the information now that negotiations are done. There are no more proposals to write. All wages and benefits for the Response Specialists have been fully negotiated. While there may be issue remaining regarding the implementation of the Response Specialist Organization, there are no economic issues outstanding.

During the hearing, Board Counsel attempted to assert that Respondent informed the Union that it would continue to look at financial metrics in order to assess whether to continue its use of subcontractors. In support of this assertion, Board Counsel entered its GC Exhibit 14 and 15 into the record, specifically the chart detailing proposed metric list on page 10. See GC. Ex. 14 and 15. However, that list only illustrates that there are no true financial concerns outstanding. The column listing Financial includes "Capital Investment Goals," "Maintenance Investment Goals," "Capital/ O&M Balance" and "Overtime." *Id.* at p. 10. Capital investment and maintenance Goals have nothing to do with contractor costs. *Tr.* p. 211. Rather, the Union acknowledged that they refer to certain tasks and assignments being performed; they bear no

relations to what the response specialist are paid. This fact was confirmed at hearing by both the Union's Business Manager and the Company's Manager for Labor Relations. Id. "Capital/O&M Balance" refers to the Company budget and the Union expressly testified that it has not requested the Company's budget. Tr. p. 213. In any event, it would not be entitled to such financial information under long-established labor law precedent unless the Company pled some inability to pay. See Section III (C); see also Nat'l Labor Relations Bd. v. Truitt Mfg. Co., 351 U.S. 149, 153-54, (1956); ' Media Gen. Operations, Inc., d/b/a Richmond Times-Dispatch & Graphic Commc'ns Int'l Union, Local 40-n, AFL-CIO, 345 NLRB 195, 197 (2005), citing Lakeland Bus Lines, Inc. v. NLRB, 347 F.3d 955, 960-961 (D.C. Cir. 2003), denying enf. Lakeland Bus Lines, 335 NLRB 322 (2001). Such pleading is not likely to happen where: (1) the parties are not in negotiations; (2) where the use of contractors is far more expensive than using the internal workforce. Finally, "Overtime" refers to hours worked and is not related to wages for the Response Specialist or contractor costs. In any event, Respondent has already provided the Union with aggregate hours worked by the contractors. Accordingly, there are no economic issues that would require an analysis of the contractor costs information.

Moreover, the parties find themselves in the same exact posture they were in when the Union made its initial requests for contractor costs information in 2014 and the Union and Region abandoned its pursuit of a charge for failure to provide such information. Again, where the labor contract provides Respondent with the right to subcontract and where the parties are not engaged in any bargaining, the Board has consistently held that a union has no right to contractor information. Detroit Edison Company, 314 NLRB 1273, 1275 ("given the agreements of maintenance of unit employment levels and the Respondent's acknowledged freedom to make unilateral subcontracting decisions – subject only to the contractual conditions mentioned above

– the requested subcontractor cost data simply had no potential linkage to any bargaining which the Union could demand on behalf of the unit employees at or near the time of its information request.”). In this light, even if there were a violation of the Act, which there is not, the Administrative Law Judge should find that the fact that negotiations have concluded negates the relevance and need to provide the Union with any confidential contractor costs information.

**D. No Information Should Be Provided As A Remedy Because Negotiations Have Concluded And All Issues Are Moot**

Again, *assuming arguendo* that the Administrative Law Judge did find that the Company did violate the Act by not providing certain information, including but not limited to the contractor costs information, his Honor should not order that *any* information be provided as a remedy because negotiations have concluded and all issues are moot. In fact, the sole reason the Union alleges for any of the information sought is for purposes of 2016 negotiations and formulating proposals related to same. See Jt. Ex. 5-7. Where those negotiations have concluded and there are no outstanding issues with respect to any economic issues, the Union’s need for any such information is no more and providing a remedy for Respondent to produce same is futile exercise.

In at least one case, the Board similarly discussed the futile-nature of a remedy when the requested information was no longer needed. See, e.g., Borgess Medical Center, 342 NLRB 1105 (2004). In Borgess Medical Center, the Board found that the union’s request for a hospital's confidential “incident report” needed for arbitration was moot after conclusion of arbitration where the hospital met its burden of proving that information no longer needed. The Board expressly noted that:

We agree with our colleague that the issue of whether there is a violation is to be determined by the facts as they existed at the time of the union request. However, the

*remedy* for that violation must take into account the facts as they exist at the time of the Board's order. Where, as here, there is no longer a need for the information, it is pointless to order bargaining about its supply, or to engage in the delicate act of balancing important interests.”)

Borgess Medical Center, 342 NLRB 1105, 1106-1107. See also, e.g., Westinghouse Electric Corp., 304 NLRB 703 fn. 1, 709 (1991) (no affirmative order to produce requested information in light of judge's finding that only demonstrated relevance of information was to a concluded arbitration that the arbitrator was without authority to reopen); see also A.W. Schlesinger Geriatric Ctr. & Serv. Employees Int'l Union, Local 706, AFL-CIO, 304 NLRB 296, 297-98 (1991)(“The Union did make a written and specific information request on July 18. The portions of this request relating to newly hired replacement employees and health plan costs are presumptively relevant to bargaining. Given the parties' acknowledged practice of responding to information requests at the next bargaining session, however, the Respondent's obligation to provide the aforementioned information was rendered moot by the Respondent's lawful withdrawal of recognition on August 2, discussed below. The parties had no more bargaining sessions after the one held on July 18, when the written information request was given to the Respondent, and there is no contention that the Respondent should have complied with the request before August 2. Further, in light of the Respondent's lawful withdrawal of recognition on August 2, it had no duty to comply with any of the Union's information requests made after that date. Accordingly, we affirm the judge's dismissal of the complaint allegations pertaining to the Respondent's failure to supply requested information.”).

Here, the Administrative Law Judge is faced with a similar plight. While Respondent does not dispute that, in the course of negotiations, the information that the Union sought was presumptively relevant (with the exception of the contractor information), the Union’s need for any such information, including the contractor costs information, has expired. The Respondent

and the Union were able to reach an agreement on a successor contract that was ratified shortly after June 1, 2016. The Union's articulated needs for any of the information sought was for the sole purposes of 2016 negotiations. See Jt. Ex. 5-7. All issues regarding the Response Specialist Organization have been resolved. All issues regarding wages for the entire bargaining unit have been resolved. All issues regarding health and welfare benefits for the entire bargaining unit have been resolved. All issues regarding meal reimbursements for the entire bargaining unit have been resolved. All issues regarding expenses for the entire bargaining unit have been resolved. All issues regarding shift premiums for the entire bargaining unit have been resolved. At hearing, neither the Union nor Board Counsel presented any issues regarding the information requested were the subject of on-going disputes. Accordingly, it begs the questions of: "Why are we here?" If it is solely for the Region to assure that the Company will post a notice that the Company needed to provide information four months ago, the Company would be willing to do so. However, to have the Company "go through the motions" of expending excessive manpower hours and resources to provide the Union with information it no longer needs and that the Union will simply throw out or put on a shelf to collect dust, that purpose seems utterly wasteful. Surely, all parties' efforts are better served tending to more relevant endeavors. Therefore, the Company respectfully requests, even if the Administrative Law Judge finds that the Company did violate the Act in some way, that his Honor will refuse to order that Respondent needs to produce any outdated information.

### **III. CONCLUSION**

For the reasons discussed above, Respondent respectfully requests that the Administrative Law Judge dismiss the unfair labor practice charge and Complaint with respect to the Region and Union's allegations that the Respondent violated the Act by failing to provide the

Union with confidential third-party contractor costs information. Further, to the extent the Administrative Law Judge finds that Respondent failed to provide any other information, Respondent respectfully requests that the Administrative Law Judge find that a remedy to provide any such information is moot. Given the nature of this matter and Respondent's willingness to concede the relevance of all other information, excluding the third-party contractor information, Respondent has not provided any recommended conclusions of law, except for the following:

1. Respondent Connecticut Light and Power Company d/b/a Eversource Energy did not violate Section 8(a)(1) and (5) of the Act by failing or refusing to provide Local 420 with information related to third party contractor cost information requested in its December 2015 and February 2016 information requests.

RESPECTFULLY SUBMITTED BY,

Connecticut Light and Power Company  
d/b/a EVERSOURCE ENERGY

By its attorney,

s/ Ronald S. Allen

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**Certificate of Service**

In accordance with Section the Board's Rules and Regulations, I hereby certify that a copy of the forgoing was served electronically using the NLRB e-file service on October 13, 2016.

s/ Ronald S. Allen

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Ronald S. Allen