JD(SF)–52–16
New York, NY

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

TEACHERS COLLEGE,
COLUMBIA UNIVERSITY

and **Case 02-CA-164870**

LOCAL 2110, UNITED AUTO WORKERS

Susannah Z. Ringel, Esq., for the General Counsel.

Ceilidh B. Gao, Esq., (Levy Ratner, P.C.)
for the Charging Party.

Tara E. Daub, Esq., Alexander E. Gallin, Esq.,
(Nixon Peabody, L.L.P.)
for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. This case was tried before me in New York, New York, on September 7, 2016, based upon a Complaint and Notice of Hearing issued by the National Labor Relations Board ("Board") alleging that Teachers College, Columbia University ("Respondent" or "Teachers College") violated Section 8(a)(1) and (5) of the National Labor Relations Act ("Act") by failing to furnish relevant information to Local 2110, United Auto Workers ("Union").[1] Based upon the entire record, including my observation of the demeanor of the witnesses,[2] and after considering the briefs filed by the General Counsel, the Union, and Respondent, I make the following findings of fact and conclusions of law.

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[1] Citations to the transcripts will be denoted by "Tr." with the appropriate page number. Citations to the General Counsel's Exhibits, Respondent's Exhibits, Union Exhibits, and Joint Exhibits will be denoted by "GC." "R." "U." and "JX." respectively.

[2] When necessary, credibility resolutions have been made based upon a review of the entire record in this proceeding. Witness demeanor was the primary consideration in making credibility resolutions. I also considered the inherent probability of the testimony and whether such testimony was in conflict with credited testimony or documentary evidence. Testimony contrary to my findings has been discredited.

I. Jurisdiction And Labor Organization

Teachers College is a New York nonprofit educational institution with a campus located in New York City. Respondent derives annual revenues in excess of $1,000,000, and purchases supplies valued in excess of $50,000 directly from firms located outside the State of New York. Accordingly, I find Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, that this dispute affects commerce, and the Board has jurisdiction pursuant to Section 10(a) of the Act. Respondent admits, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act. (Tr. 9)

II. Findings of Fact

Teachers College is a private nonprofit educational institution, and has been affiliated with Columbia University since 1898. Although they are separate legal entities, the College serves as Columbia's graduate school of education, offering students graduate degrees in education. *Strujan v. Teachers College Columbia University*, 2010 WL 3466251, at *1 (S.D.N.Y. 2010). As of the 2015–2016 academic year, over 5,000 students were enrolled at Teachers College. The Union, or its predecessor, has represented a unit of Respondent's secretarial and clerical employees since at least the 1990's. (Tr. 18–19, 139–142)

Respondent and the Union are signatories to a collective-bargaining agreement (CBA) with a recognition clause that reads as follows:

> The College recognizes Local 2110 as the exclusive bargaining agent for, and this Agreement shall apply to, all on campus full-time and part-time[3] . . . secretarial and clerical employees including clerks, account clerks, secretaries, receptionist-typists, clerk-typists, assistant supervisors in the Word Processing Center, correspondence clerks, postal clerks, library assistants, personnel assistants, duplicating equipment operators, electronic data processing machine operators, bookkeeping machine operators, bookkeeping machine operator supervisors, key-punch operators, key-punch operator supervisors, audiovisual technicians, student financial aid counselors, cashiers, and telephone operators . . . excluding part-timers who work less than twenty hours except as hereinafter provided, maintenance employees, professional employees, temporary employees as defined herein, guards, watchmen, confidential employees, supervisors as defined in the National Labor Relations Act and all other employees.

The CBA was negotiated in 2007 and expired in February 2012. It was subsequently extended in 2012 and again in 2015 via a written memorandum of agreement (MOU). The CBA is currently is set to expire in February 2018.[4] (JX. 1–3)

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[3] The agreement defines a part-time employee as "one who is regularly scheduled to work twenty hours or more per week or who works an average of twenty hours a week or more who is not a student at Teachers College, Bernard College or Columbia University . . . [a] part-time employee who subsequently elects to take courses . . . shall remain a member of the bargaining unit." (JX. 1 p. 6)

[4] Both MOU's contain minor changes to the CBA's basic terms. No changes were made to the recognition clause.

In 2012, during a collective-bargaining session, the Union told Respondent it believed that some professional staff were being paid hourly, and therefore should be represented by the Union. On April 2, 2012, the Union filed a grievance, pursuant to the terms of the CBA, alleging Respondent was improperly excluding positions from the bargaining-unit. As part of the grievance, the Union made an information request asking for, in pertinent part: (1) a list of all non-unit part-time, casual, hourly, temporary, and internship positions at the College;[5] and (2) job descriptions for each of these positions. After some discussions, including a request from Respondent that the Union clarify the information request, on September 7, 2012, Respondent informed the Union that they had not identified any issues regarding the improper transfer of unit work. Respondent also expressed its belief that the Union, through the information request, was seeking evidence to support filing NLRB charges, and that the College "had no obligation to provide information that is not available under Board procedures." The Respondent asked the Union to "let [them] know" if the Union wanted to clarify the grievance or to discuss specific cases involving unit work being transferred outside the unit. (R. 12, 11; JX. 6; Tr. 148–49)

Despite their efforts, the parties were unable to resolve their dispute. On December 4, 2012, the College sent an email to the Union formally denying the grievance.[6] On December 13, 2012, the Union provided the College notice of its intention to arbitrate. The parties exchanged correspondence, disagreeing as to whether the grievance was arbitrable. On June 13, 2014, the Union emailed the arbitrator, copying Respondent, stating that the parties had agreed to his appointment to arbitrate the matter.[7] The arbitrator held a telephone conference asking the parties submit pre-hearing briefs. Respondent's brief argued that the grievance was not subject to arbitration because: (1) the Union's request was untimely; and (2) the grievance involved unit placement issues (i.e. the Union was seeking to include non-bargaining unit positions in the bargaining unit) which were not subject to arbitration. (R. 13, 15; JX. 4, 5, 6)

It appears that sometime in October 2014, the arbitrator asked the parties to discuss settlement. Before doing so, on November 20, 2014, the Union informed the College that it needed the information responsive to its April 2012 information request. (R. 1–2; Tr. 84)

The attempt at settlement stalled, and on January 21, 2015, the arbitrator issued his decision finding that the grievance was timely filed. The arbitrator also held that, while he did not have authority to order that specific positions be included in the bargaining unit, he did "have authority to determine whether non-bargaining unit employees are performing unit work, and/or whether the College has transferred unit work to non-unit employees, and to fashion an

[5] As part of the list of employees, the Union asked for the specific "name, job title/classification, department, rate of pay, work schedule, actual number of hours worked per week (if different from work schedule), starting date and termination/end date (where applicable) from January 2010 to the present." (R. 11)

[6] Among other things, the email noted that there was nothing in the parties' collective-bargaining agreement which disallowed "positions outside of the unit to also share the responsibility" of performing work that is performed by unit members. (R. 13; JX. 6 p. 4.)

[7] The parties asked the arbitrator to first decide the issue of arbitrability. (JX. 6, p. 5.)

appropriate remedy."[8] Accordingly, the arbitrator ordered the grievance to proceed to hearing upon the request of either party. (JX. 6)

On February 20, 2015, the Union informed the College that it was renewing its information request. The Union stated that, in order to prepare for the arbitration, it needed the following records from July 1, 2012, forward:

1. Records of all positions the College classifies as "hourly professional" including name, title, department, schedule of hours, rate of pay and job description.

2. Records of all positions the College considers "temporary," "interim" or "casual" that have existed in the aggregate for longer than four months (regardless of the number of employees who may have filled a particular position or the length of time art individual was in the position) including name(s), title, department, schedule of hours, rate of pay and job description.

3. Records of all internships (excluding students with work-study grants) that have lasted or are scheduled to exceed four months including name, title, department, schedule of hours, rate of pay and job description.

4. Records of all employees, whether full or part-time, who are (a) not professional, supervisory, maintenance, confidential, work-study, or guards or watchmen; and (b) have not been placed within the bargaining unit. The requested records include name, title, department, schedule of hours, rate of pay and job description.

The Union also asked the arbitrator to issue an order setting forth a schedule for the College to provide the information requested and to schedule a hearing date. (R. 3; JX. 7)

On March 25, 2015, the arbitrator issued a decision finding that, although the Union was entitled to relevant information requested from the College, the arbitrator was unable to determine exactly what information the College must provide. Thus, he directed the parties to reach an agreement within 30 days regarding what information would be provided to the Union. If they did so, a hearing would be set within 60 days. Otherwise, a hearing would be set as soon as practicable and the arbitrator would determine whether a failure to provide information would warrant an adverse inference against the College. (JX. 7)

On April 7, 2015, the attorneys for the Union and Respondent discussed the Union's information request, with the Union explaining that it was trying to find a way to streamline the information production or otherwise tailor the request to assist with compliance. On April 13, 2015, the Union sent Respondent a letter with a revised information request, in "an attempt to focus" the request. The letter set forth four categories of positions, and asked for the names of employees filling the positions, the position type, department, rate of pay, work schedule, and job description, from July 1, 2012. The Union included a list of 31 specific

[8] Indeed, the arbitrator found that, while the Union's demand for arbitration was imprecise, "the College understood that the Union was asserting, perhaps among other things, that some bargaining unit work at the College was being done by non-bargaining unit employees." (JX. 6 p. 11)

positions that it believed would be encompassed by the information request as a "starting point" for their discussions about what documents the College would produce pursuant to the arbitrator's order. (JX. 8; Tr. 106–07)

On April 17, 2015, the College responded asserting that the information requested was burdensome. Respondent stated its willingness to work with the Union regarding the production of "relevant information relating to a proper purpose" and asked the Union to: (1) identify the work allegedly transferred to non-unit employees; (2) provide the basis for the Union's belief that work has been transferred to non-unit employees; and (3) articulate the alleged connection between the unit work and the information requested. Respondent stated that the Union's failure to provide the information requested to Respondent would "effectively preclude Teachers College from responding" in a meaningful fashion.[9] (JX. 9)

Thereafter, Respondent sent a letter to the arbitrator accusing the Union of dilatory tactics, and asking that the grievance be dismissed if the "Union continues its refusal to either move forward with this arbitration or withdraw its demand for arbitration." (JX. 10 p. 3) On September 28, 2015, the arbitrator issued an order denying Respondent's request to dismiss the grievance. He gave the parties 30 days to reach an agreement regarding the Union's information request. If they did so, a hearing would be set. If not, the grievance would be dismissed unless, within an additional 30 days, the Union either: (a) issued a subpoena for the information; (b) requested hearing dates for the grievance; or (c) filed unfair labor practice charges with the NLRB. (JX. 13)

After receiving the arbitrator's order, on September 28 the College resent its April 2015 letter to the Union, again asking the Union to: (1) identify the work allegedly transferred to non-unit employees; (2) provide the basis for the Union's belief that work has been transferred to non-unit employees; and (3) articulate the alleged connection between the unit work and the information requested. The College stated that this was a good-faith proposal regarding the scope of documents the College would be willing to provide, and asked the Union for a response.

The Union replied by asking the College whether it would produce the information requested if the Union provided an updated list of specific non-unit positions that it believed were performing bargaining unit work. Respondent asserted that the Union's proposal was ambiguous, and asked the Union to identify the specific "tasks" it believed were being transferred outside the unit. (JX. 14)

As the correspondence between the parties continued, the Union had its members canvass the College, and review documentary and other evidence in their possession regarding what positions were performing unit work. Along with the Union's attorney, they compiled a list of non-unit positions that, in the Union's belief, performed unit work, going building by building, department by department, and floor by floor. (Tr. 50–51) The Union's attorney gathered the information they knew about each position, including the title, department, and history of the position, and created a chart of 34 non-unit positions. Along with a list of the position titles, the

[9] Also, the College asserted its belief that the Union's information request was being sought for an improper purpose, namely in furtherance of the Union filing a unit clarification petition with the Board or for other purposes aimed at expanding the unit. (JX. 9)

chart included the department for each position, and a short "comments" section setting forth the basis for the Union's belief and/or a description of the specific position in question. On October 22, 2015, the Union emailed the chart to Respondent, stating its belief that the College had improperly transferred bargaining unit work to employees in the positions set forth in the chart, and asking the College provide the Union the following information about the positions, from July 2012 to the present: (1) the title of the position; (2) the name or names of employee(s) filling the position; (3) the position type; (4) the department; (5) the regular schedule for the position; (6) the rate of pay; and (7) the current or past job descriptions. In its email to Respondent, the Union stated that the chart was derived by using job postings in the Union's possession, along with information about changes to the unit that came from unit employees, as well as observations made by unit employees with respect to job functions they had observed non-unit employees performing. (JX. 15) This email, and its related chart, is the basis for the unfair labor practice allegations in the Complaint.

Respondent replied, via letter dated October 28, 2015, asserting that the information sought was not relevant, that the Union was seeking information for inappropriate purposes and that the request was both overly broad and unduly burdensome. Therefore, the College did not provide the Union with the information requested, asserting that the Union was trying to get information that it would not otherwise be entitled to receive if it had filed a unit clarification petition with the Board. Respondent ended the letter asking the Union to identify the specific work at issue that the Union believed was transferred to non-unit employees. (JX. 16)

The Union filed its unfair labor practice charge on November 20, 2015. Even after the hearing in this matter was scheduled, the Union's grievance continued. On February 26, 2016, the arbitrator confirmed that the grievance hearing would proceed, ordered the Union to issue arbitration subpoenas by March 11, 2016, and to provide the College with the specific unit work it claimed was being performed by non-unit employees.[10] (RX. 8) On March 29, 2016, the arbitrator informed the parties that the grievance hearing would start with the transfer of work in the Department of Health and Behavioral Sciences, which were the first positions to be arbitrated, and offered a June 15 hearing date. (RX. 9; Tr. 132) As of the date of the hearing in this matter, the Union had not received the information it requested.[11]

III. Analysis

A. Legal Standard

Section 8(a)(5) of the Act imposes on an employer the "duty to bargain collectively" which includes a duty to supply a union with requested information that will enable it to "negotiate effectively and perform its duties as bargaining representative." *New York & Presbyterian Hospital v. NLRB*, 649 F.3d 723, 729 (D.C. Cir. 2011), enfg. 355 NLRB 627 (2010). This includes the duty to furnish the union with information requested in order to properly administer a collective-bargaining agreement, and the processing and evaluating of

[10] There is no evidence in the record whether the Union did so.

[11] There is no evidence in the record as to whether the arbitrator has ever ordered that the company produce the information the Union had requested in its October 22, 2015 information request. (Tr. 120)

grievances pursuant to that agreement. Id; *Oncor Electric Co., LLC*, 364 NLRB No. 58, slip op. at 20 (2016).

Where the information requested concerns employees in the bargaining unit, which goes to the core of the employer-employee relationship, that information is presumptively relevant. *United States Postal Service*, 360 NLRB No. 94, slip op. at 5 (2014). However, when the request involves non-unit employees or operations, the union has the burden of establishing the relevance of the requested information. Id. "In either situation, the standard for relevancy is the same: 'a liberal discovery-type standard.'" *Knappton Maritime Corp.*, 292 NLRB 236, 238–39 (1988) (quoting *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 437 (1967)).[12]

A union satisfies its burden of proving relevance by demonstrating "a reasonable belief supported by objective evidence for requesting the information." *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994); *Cannelton Industries, Inc.*, 339 NLRB 996, 1004–05 (2003); *United States Postal Service*, 360 NLRB No. 94, slip op. at 5; *Dodger Theatricals Holdings, Inc.*, 347 NLRB 953, 967–68 (2006). The union is not required to show that the information triggering its request was accurate or ultimately reliable; indeed a union's information request may be based on hearsay. Id; *See also, United States Postal Service*, 337 NLRB 820, 822 (2002). "Even rumors may be pursued, providing that there is at least some demonstration that the request for information is more than pure fantasy." *Cannelton Industries*, 339 NLRB at 1005. The Board does not pass on the merits of the underlying grievance, or determine beforehand whether a breach of the collective bargaining agreement occurred. Id. at 1003; *USPS*, 337 NLRB at 822.

B. The Union established the relevance of the requested information

Applying these principles, I find that, by the time of its October 22, 2015 information request, the Union had established and demonstrated to the College both the relevance of the requested information and the existence of evidence that gave rise to the Union's reasonable belief in the relevance of that information. According to the arbitrator's July 21, 2015 order, the Union's grievance was timely filed, and the arbitrator determined that he had the authority to determine whether non-bargaining unit employees were performing bargaining unit work, and/or whether the College transferred unit work to non-unit employees, and to fashion an appropriate remedy. (JX 6) Relying upon information received from Union members canvassing the College in October 2015, along with job postings and other documents in the Union's possession, the Union identified 34 non-unit positions it believed were performing bargaining unit work. In the information request the Union listed, to the best of its knowledge, the position name and department, and included a "comment" section describing the specific position in question, or identifying the basis of the Union's belief that the position was performing unit work.

Although under current Board law the Union was not obligated to disclose the underlying facts giving rise to its belief the information requested was relevant, *Cannelton Industries, Inc.*, 339 NLRB at 997, here it did so, explaining that the information request was based upon job postings, as well as information gathered from members about changes in the unit and job

[12] Potential or probable relevance is sufficient to trigger an employer's obligation to provide the information. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

functions they had observed non-unit employees performing.[13] As such, absent a valid defense, the Union was legally entitled to receive the information it requested.[14] *American Signature, Inc.*, 334 NLRB 880, 885 (2001).

5 **C. Respondent has failed to prove a valid defense**

Although Respondent has raised multiple defenses to its refusal to provide the Union with the information it requested, all are without merit.

10 (1) 10(b) defense

First, the College asserts that the Complaint allegations are time-barred pursuant to Section 10(b) of the Act, because much of the information the Union requested in its October 22 information request was subject to previous information requests. *Respondent Brief,* at 18–20.
15 However, the "Board has long held that each request for information and each refusal to comply gives rise to a separate and distinct violation of the Act." *Centinela Hospital Medical Center*, 363 NLRB No. 44, slip. op. at 2, fn. 6 (2015) (rejecting 10(b) argument based upon previous information requests made outside the 10(b) period). As such, the charge in this matter was timely filed, and Respondent's 10(b) defense is baseless.
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(2) Alleged bad faith and improper reasons

Next, Respondent asserts that it was privileged to not provide the Union with the information requested, because the October 22 information request was made in "bad faith" and
25 for "improper purposes." *Respondent Brief*, at 29–30. Specifically, Respondent claims that the information request was made for the purpose of pursuing a Board proceeding in which discovery is not available, citing *Frontier Hotel& Casino*, 318 NLRB 857, 877 (1995); *Freemont-Rideout Health Group*, 357 NLRB 1899, 1905–06 (2011); and *WXON-TV*, 289 NLRB 615, 617–18 (1988). However, these cases involve situations where an information request was
30 made while another NLRB proceeding was pending.[15] Here, at the time of the information request, there were no outstanding charges or complaints pending before the Board; the Union's information request was not made as a substitute for discovery.[16]

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[13] See JX 15.

[14] The College's reliance on a General Counsel Advice memorandum in *ABM Industries, Inc.*, 2015 WL 3486488, is misplaced. Advice Memoranda do not constitute Board law, and are not precedent. *Kysor Industrial Corp.*, 307 NLRB 598, 602 fn. 4 (1992). Also, unlike the unions in *ABM Industries*, here the Union demonstrated "a reasonable belief supported by objective evidence for requesting the information." *Shoppers Food Warehouse*, 315 NLRB at 259.

[15] Respondent's reliance on *Coca-Cola Bottling Co.*, 311 NLRB 424 (1993), is similarly unavailing. There, the Board found no violation where the union's information request was "essentially an attempt by two competitors of the Respondent, who are contributing members of a multiemployer pension fund . . . to use the Union as a vehicle to force the Respondent to provide competitive cost data to them." *Id.* at 425. The facts and holding of *Coca-Cola Bottling* have no bearing to the matters herein.

[16] In its brief, Respondent also cites to decisions made by NLRB administrative law judges to support its arguments. *See Respondent Brief*, at 30 (citing *Crompton Corp.*, 2003 NLRB Lexis 268, at * 21 (NLRB May 28, 2003); *See also*, *Id*. at p. 32 (citing *Time Inc.*, 2016 NLRB Lexis 574, at *112–113). Administrative law judge decisions are "simply a recommendation to the Board," are not precedent, and serve as "no authority binding on any other administrative law judge." *Austin Fire Equip., LLC*, 360 NLRB No. 131, slip op. at 13 (2014).

Respondent also asserts that the Union's real objective in making the information request was to prepare to use Board procedures to organize or accrete non-unit positions into the bargaining unit, or to later file a ULP charge for unlawful conduct. *Respondent Brief*, at 32. However, the issue here is not whether the information itself may be of value for some other purpose, but "whether under the applicable liberal discovery standard of relevance the General Counsel and the Union have shown the relevance of the requested information." *See Blue Diamond Co.*, 295 NLRB 1007, 1011 (1989) (finding a violation, and rejecting the employer's contention that the union's true purpose for an information request was to use the information as an aid to an organizing drive.) Moreover, a potential charge or petition is "not a valid reason for depriving the Union of relevant information." *Fallbrook Hospital Corp.*, 360 NLRB No. 73, slip op. at 1, fn. 3 (2014) (internal quotations omitted) (employer's contention that the union was trying to use an information request as a discovery device for contemplated unfair labor practice charges was without merit), enfd., 785 F.3d 729 (DC. Cir. 2015). As set forth above, the General Counsel and the Union have shown the relevance of the October 22 information request, thereby obligating Respondent to provide the information to the Union.

(3) Claims the Union committed unfair labor practices

Respondent claims that its obligation to respond the Union's information request was "excused" because the Union "was itself in violation of the NLRA" by not properly replying to the College's April 17, 2015, request for information. *Respondent Brief*, at 35–37. The College presented no evidence that an unfair labor practice charge was filed regarding its April 17 letter to the Union. Moreover, even if Respondent was correct in the characterization of the Union's actions, under the circumstances presented here, they would not constitute a defense to the Complaint allegations. "Even in labor relations two wrongs do not make a right." *Meier & Frank Co., Inc.*, 89 NLRB 1016, 1034 (1950). As set forth above, the Union has shown the relevance of its information request and "a reasonable belief supported by objective evidence for requesting the information." *Shoppers Food Warehouse*, 315 NLRB at 259. That the College may have made its own independent information request, which it claims the Union has not properly responded to, does not serve as a defense to Respondent's continued failure to provide the Union with relevant information.

(4) Claims the request was overly broad and burdensome

Respondent asserts that its failure to provide information to the Union is privileged because the October 22 information request was "over broad and unduly burdensome." *Respondent Brief*, at 33. I disagree. Regarding the breadth of the information request, it is specifically targeted to the individual positions the Union had identified as performing bargaining unit work, which is the subject of the outstanding grievance. The information sought by the Union relates directly to the specific positions, and is the type of information that would either directly assist the Union in the arbitration or assist them in identifying further evidence to present to the arbitrator. As for the temporal scope of the request, going back to July 2012, the grievance currently being arbitrated was originally filed in April 2012. Thus the Union is seeking information covering the general time period of the grievance. Therefore, the information request is not overly broad.

Similarly, the information request is not burdensome. Claims of undue costs and burden of compliance ordinarily will not justify an initial refusal to supply relevant data. "Issues focused on these factors typically are considered instead at the compliance stage of a disclosure
5 proceeding, where the parties may bargain over the allocation of costs of producing the requested information." *Oil, Chemical & Atomic Workers Local Union v. NLRB*, 711 F.2d 348, 363–64 (D.C. Cir. 1983) (citing *Safeway Stores*, 252 NLRB 1323, 1324 (1980)), enfd., 691 F.2d 953 (10th Cir. 1982). Moreover, there is no evidence in the record to verify any of Respondent's claims or estimates regarding the alleged burden of compliance. *Colgate-Palmolive Co.*, 261
10 NLRB 90, 92 (1982), enfd. sub. nom., 711 F.2d 348 (D.C. Cir. 1983) ("while respondent has estimated for each of the possible sources of information the number of documents involved and the man-hours and costs of locating and identifying the data and furnishing it to the union, there is no evidence on the instant record to verify such estimates—certain of which in any event appear to contain exaggerations."); *Goodyear Atomic Corp.*, 266 NLRB 890, 891 (1983)
15 (employer offers no substantiation to its claim that the request would be prohibitively expensive in time, labor, and resources to fulfill). Thus, Respondent is obligated to provide the Union with the responsive information.[17]

Accordingly, because the Union has met its burden of establishing the relevance of its
20 October 22, 2015 information request, I find that Respondents violated Section 8(a)(1) and (5) of the Act by failing to provide this information.[18]

Conclusions of Law

25 1. Respondent Teachers College, Columbia University is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 2110, United Auto Workers, is a labor organization within the meaning of Section 2(5) of the Act.

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3. The following employees constitute an appropriate unit for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All on campus full-time and part-time secretarial and clerical employees
35 including clerks, account clerks, secretaries, receptionist-typists, clerk-typists,

[17] If it is clearly shown, during compliance proceedings, that substantial costs are involved, then the parties must bargain in good faith as to the allocation of such costs. *Goodyear Atomic Corp.*, 266 NLRB 890, 891 (1983). "Absent agreement on the distribution of costs, Respondent must grant the Union access to the records from which the information can be derived," in conformance with any State and Federal privacy regulations and statues. Id.

[18] At trial, Respondent attempted to introduce into evidence a collective-bargaining agreement from 1975 and an arbitration award from 2004, which were excluded from evidence based upon the General Counsel's relevance objections. (RX. 10, 14; Tr. 143, 163–64). In its brief Respondent asks that I reverse these evidentiary rulings, arguing that the 1975 CBA shows that students have been historically excluded from the unit, answering phones while receiving work-study financial aid, and that the award shows the arbitrator rejected the Union's claim that the CBA's part-time employee provision is a work preservation clause, and that certain job duties are reserved for the bargaining unit. *Respondent Brief*, at 15–17. However, these arguments go to the merits of the Union's underlying grievance, upon which the Board does not pass when ruling on an information request. *Cannelton Industries*, 339 NLRB at 1003; *USPS,* 337 NLRB at 822. Both documents were properly excluded from evidence.

assistant supervisors in the Word Processing Center, correspondence clerks, postal clerks, library assistants, personnel assistants, duplicating equipment operators, electronic data processing machine operators, bookkeeping machine operators, bookkeeping machine operator supervisors, key-punch operators, key-punch operator supervisors, audiovisual technicians, student financial aid counselors, cashiers, and telephone operators, excluding part-timers who work less than twenty hours except as hereinafter provided, maintenance employees, professional employees, temporary employees as defined herein, guards, watchmen, confidential employees, supervisors as defined in the National Labor Relations Act and all other employees.

4. By failing and refusing to provide the Union with the information it requested on October 22, 2015, Respondent has been engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order:[19]

ORDER

The Respondent Teachers College, Columbia University**,** its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its duties as collective-bargaining representative of the Respondent's employees.

(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 actions necessary to effectuate the policies of the Act.

(a) Promptly provide the Union with: all relevant information requested by the Union in its email dated October 22, 2015, and related attachment.

[19] 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.

(b) Within 14 days after service by the Region, post at its New York, New York facility copies of the attached notice marked "Appendix A."[20] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive
5 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 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,
10 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 October, 22, 2015.

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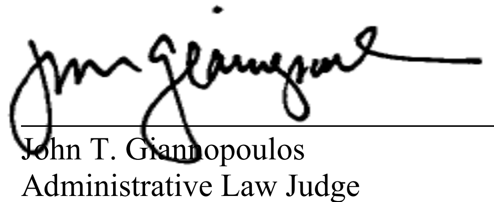
(c) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

20 Dated, Washington, D.C., December 30, 2016



25 John T. Giannopoulos
Administrative Law Judge

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX "A"

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 a representative 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 provide Local 2110, United Auto Workers (Union) with requested information that is relevant and necessary to the Union's performance of its duties as collective-bargaining representative.

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 promptly provide the Union with all relevant information requested in its email dated October 22, 2015, and related attachment.

TEACHERS COLLEGE, COLUMBIA UNIVERSITY
(Employer)

Dated __________________ By ____________________________________
(Representative) (Title)

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

26 Federal Plaza, #3614, New York, NY 10278-0104
(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/02-CA-164870 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (212) 264-0300.