

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

POUDRE VALLEY RURAL ELECTRIC
ASSOCIATION, INC.

Respondent

and

Case 27-CA-167119

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111

JD(SF)-09-17

Charging Party

**GENERAL COUNSEL'S ANSWERING BRIEF TO
RESPONDENT'S STATEMENT OF EXCEPTIONS
AND BRIEF IN SUPPORT OF EXCEPTIONS**

On February 27, 2017, Administrative Law Judge Gerald M. Etchingham issued a Decision and Order, finding that Poudre Valley Rural Electric Association, Inc. ("the Company") violated Section 8(a)(5) and (1) of the Act by failing and refusing on and after November 6, 2015, to furnish International Brotherhood of Electrical Workers, Local 111 ("the Union") with bargaining unit employees' names, home addresses, and home telephone numbers. (ALJD 1-24.)¹ The Company filed exceptions to the

¹ "ALJD" refers to the Administrative Law Judge's Decision and Order. "Br" refers to the Company's brief in support of its exceptions. "Tr" refers to the transcript of the hearing before the Administrative Law Judge. For transcript citations, numbers preceding a colon are to page numbers, and numbers following the colon are to line numbers on those pages. "GCX" refers to exhibits offered at the hearing by the General Counsel.

Decision and Order, along with a supporting brief. The General Counsel submits this answering brief to address issues that the Company raised.

ARGUMENT

THE ADMINISTRATIVE LAW JUDGE CORRECTLY FOUND THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY FAILING AND REFUSING TO FURNISH THE UNION WITH BARGAINING UNIT EMPLOYEES' NAMES, HOME ADDRESSES, AND HOME TELEPHONE NUMBERS

1. Statement of Facts

a. Background

The Company is a not-for-profit public utility and electric cooperative that is engaged in the retail and/or wholesale supply and transmission of electrical energy to its members who are located in counties in Northern Colorado. (GCX 1(l)).

The Union represents a unit of Respondent's regular full-time employees included in classifications set forth in a unit description in the parties' collective-bargaining agreement. (GCX 1(l); 2:1).

At the time of the events at issue, the parties' collective-bargaining agreement for this unit was in effect until September 30, 2016. (GCX 2:1; Tr 19:5).

b. The information requests

In October 2015, Richard Meisinger became the Union's new business agent assigned to represent the Company's employees. On October 29, 2015, Meisinger met with the Company's management team to introduce himself and discuss some issues. (Tr 20:17-22). Meisinger met with Chief Operating Officer Jeff Wadsworth, Human Resources Director Sarah Witherell, and two other officials; Wadsworth and Meisinger did most of the talking. (Tr 20:16; 20:24-25; 96:20). At some point in the meeting,

Meisinger asked the Company for new employee information and stated that he believed he was entitled to the information, possibly under the contract. (Tr 21:10-13; 22:18; 139:17-25). The Company officials told Meisinger that they would check in the collective-bargaining agreement and get back to him. (Tr 21:13-15; 140:1-7). During the meeting, Meisinger also asked Wadsworth if he could visit employees in the field while they were working, but the Company denied that request. (Tr 22:18-22; 141:1-15).

On the afternoon of October 29, 2015, Witherell sent an email to Meisinger informing him that she did not believe the parties' collective-bargaining agreement required the Company to provide the Union with new employee information and, therefore, she would not provide him with the information he had requested. (Tr 23; 99:1-4; GCX 3).

On November 2, 2015, Meisinger sent an email in response to Witherell's email dated October 29, 2015. Meisinger reiterated his request for employee information and stated that he needed the information to keep Union records accurate. (GCX 4). Meisinger specifically requested the names of unit employees, their classifications, dates of hire, current addresses, phone numbers, and the last four digits of their social security numbers. (GCX 4; Tr 24:9-14; 99-100). The same day Meisinger sent a letter to Wadsworth requesting the names of unit employees, their classifications, dates of hire, current addresses, and phone numbers in order to keep the Union records accurate and updated. (GCX 5; Tr 24:25, 25:1-2). The letter did not request the last four digits of the employees' social security numbers because Meisinger had determined that he did not need this information. (Tr 25: 3-19).

On November 3, 2015, Witherell sent an email to Meisinger reiterating that the Company was not required, by contract, to provide the requested information. (Tr 101). Witherell stated that she had attached a similar Union request from the past as well as the Company's response to that previous request. (GCX 6(a)). Witherell attached a letter dated March 31, 2015, in which the Union requested employee names, classifications, dates of hire, and the last four digits of employees' social security numbers. (GCX 6(c)). Witherell also attached the Company response: an employee list with employee names, classifications and hire dates. (GCX 6(e); Tr 27:25; 28:1-2; 102:10)).

On November 6, 2015, Meisinger sent an email to Witherell and attached his November 2, 2015 letter to Wadsworth. (GCX 7(a)-(b); Tr 30). In his email Meisinger clarified that he no longer sought the last four digits of employee social security numbers but still wanted all the other requested information. (GCX 7(a); Tr 30:18-19).

On November 9, 2015, Witherell sent an email to Meisinger stating that she was willing to provide the Union with a seniority list as a courtesy but she would not provide addresses or any other information that the Company had not previously shared. (GCX 8(a); Tr 31:20-25; 103:3). Witherell attached to her email a then-current seniority list. (GCX 8(c); Tr 32:11; 103, 107:17-20). The list did not include employee addresses or telephone numbers.

On November 16, 2015, Meisinger sent a letter to Wadsworth stating that he was requesting the names, addresses and phone numbers of all unit employees pursuant to the Act and in order to represent the bargaining unit employees. (GCX 9; Tr 34; 106:1-10).

On December 3, 2015, Witherell sent Meisinger an email specifically responding to the Union's request for information dated November 16, 2015. (GCX 10). Witherell told Meisinger that the Company had met its obligation to provide information and that all further contact regarding the Union's request should be directed to the Company's counsel, Ray Deeny (Deeny). (GCX 10; Tr 38:3).

On December 18, 2015, Meisinger sent an email to Deeny and Witherell reiterating his information request and specifying that he was requesting the information under the Act, not under the parties' collective bargaining agreement. (GCX 11, Tr 109:12-14).

On December 19, 2015, Deeny sent Meisinger an email stating that the Company complies with the parties' collective-bargaining agreement and soliciting any legal cases that would support the Union's right to information. (GCX 12).

On December 21, 2015, Union attorney Naomi Perera (Perera) responded by email, on behalf of the Union, to Deeny's request for case law. (GCX 13; Tr 38:8-9). In the email, Perera cited to cases under the Act in which the Board required employers to provide employee information, including addresses and phone numbers, to the employees' collective-bargaining representative. (GCX 13).

On December 22, 2015, Deeny sent a letter to Perera stating that the Company had confidentiality concerns and would not provide the requested employee addresses and phone numbers. (GCX 14). Deeny listed other ways that the Union might be able to procure the requested employee information without the Company providing any assistance. (GCX 14(b)). The Company refused to provide the addresses and phone numbers of unit employees. (Tr 40:10, 43:24-25, 44:1).

On January 5, 2016, the Union filed the charge in this matter, alleging that the Company failed and refused to provide relevant requested information in violation of Section 8(a)(5). (GCX 1(a)).

2. The Administrative Law Judge's Decision

In finding that the Company violated Section 8(a)(5) and (1), the Administrative Law Judge correctly determined (ALJD 11-12, 14-15) that the requested information was presumptively relevant. The Board has held in numerous cases that unit employees' home addresses and telephone numbers are presumptively relevant to legitimate union purposes, and the Board has found many times that an employer violates Section 8(a)(5) and (1) by failing and/or refusing to provide the union representative of its employees with such information upon request. See The Sheraton Anchorage, 363 NLRB No. 6, slip op. at 40-41 (September 15, 2015); Children's Center for Behavioral Development, 347 NLRB 35, 49 (2006); River Oak Center for Children, 345 NLRB 1335, 1335 (2005); La Gloria Oil & Gas Co., 338 NLRB 858, 858 (2003); Watkins Contracting, Inc., 335 NLRB 222, 224 (2001); Land Rover Redwood City, 330 NLRB 331, 331-332 (1999); Bryant & Stratton Business Institute, 323 NLRB 410, 410 (1997); U.S. Family Care San Bernardino, 315 NLRB 108, 108 (1994); Valley Programs, 300 NLRB 423, 423-424 (1990).

"As to names, addresses, and telephone numbers, '[t]he [u]nion's obligation to represent employees presupposes the ability to communicate with them.'" Watkins Contracting, Inc., 335 NLRB at 224 (quoting Howe K. Sipes Co., 319 NLRB 30, 39 (1995)). "[D]ata without which a union cannot even communicate with employees whom it represents is, by its very nature, fundamental to the entire expanse of a union's

relationship with the employees.” United Aircraft Corporation, 181 NLRB 892, 902 (1970) (quoting Prudential Insurance Co. v. NLRB, 412 F.2d 77, 84 (2d Cir. 1969)). “[T]he exclusive bargaining representative of employees has a statutory duty fairly to represent all of the employees in the bargaining unit, nonunion employees as well as union members [and f]ulfillment of the statutory duty requires that the bargaining representative have effective means of communicating with the beneficiaries of its statutory obligation, including nonunion employees, “ Id. (citing Standard Oil Co. of California v. NLRB, 399 F.2d 639, 641 (9th Cir. 1968)). Accord Helca Mining Company, 248 NLRB 1341, 1343-1344 n.11 (1980).

Additionally, as discussed further below, the Administrative Law Judge assessed each of the Company’s defenses and correctly concluded (ALJD 12-20) that the Company did not assert any legitimate defense for failing and refusing to provide the Union with the presumptively relevant requested information.

3. The Company's Contentions Are Meritless

a. The Company's contention that the Union's request for unit employees' home addresses and phone numbers is not relevant to collective bargaining

The Respondent contends (Br 30-36) that requested information can be presumptively relevant only if the information relates to specific contract negotiations or grievance processing. That contention completely ignores the established case law, cited above, establishing that unions need, and are entitled to, information that will allow them to reach out to represented employees and communicate with them. The ability of unions to communicate with represented employees is a crucial aspect of their representational obligations and functions, and unions’ right to information from

employers to allow for contact with unit employees exists even if there is no pending bargaining or grievance. Further, the Respondent's contention fails to recognize that for information that is presumptively relevant, such as the unit-employee contact information requested here, a union is not required to show precise relevance to particular unit issues or to make a showing of any particular need.

In any event, as the Administrative Law Judge found (ALJD 15) the Union did have a need for the unit employees' contact information, because the collective-bargaining agreement in place at that time was set to expire on September 30, 2016. (Tr 160; GCX 2). With the potential that existed at that time for bargaining over a successor contract, the Union undoubtedly had a need to consider contacting unit employees to discuss whether or not there was a desire for changes to the existing contract, to prepare possible bargaining proposals, etc.

Finally, the burden to justify a failure to produce presumptively relevant information is on the employer, which must rebut the presumption of relevance and establish lack of relevance. See Lenox Hill Hospital, 362 NLRB No. 16, slip op. at 7 (February 12, 2015); Contract Carriers Corp., 339 NLRB 851, 858 (2003). Here, the Company failed to meet that burden.

b. The Company's contention that the requested information is private and/or confidential

The Company contends (Br 36-44) that the Act did not obligate it to provide the Union with the requested information because unit employees' home addresses and phone numbers are private, confidential information. That contention is meritless.

The Board has determined that unit employees' addresses and phone numbers are not inherently private or confidential when it comes to a union requesting

information about employees for whom it has a legal obligation and responsibility to represent. See River Oak Center for Children, 345 NLRB at 1336-1337; Land Rover Redwood City, 330 NLRB at 331; U.S. Family Care San Bernardino, 315 NLRB at 109; Valley Programs, 300 NLRB at 424; United Aircraft Corporation, 181 NLRB at 902-903.

In rejecting the Company's privacy/confidentiality defense, the Administrative Law Judge (ALJD 15-18) determined that the Company did not prove "a legitimate and substantial interest in preserving the confidentiality of the names, addresses, and telephone numbers of the bargaining unit employees" (ALJD 18) and that, therefore, the Company "cannot find refuge in a claim of privilege" (ALJD 15).

Notwithstanding the above-cited case law, the Company asserts (Br 37) that its employees' contact information should be treated as private/confidential information because the Union previously had "harassed" unit employees regarding non-payment of their dues. The Administrative Law Judge correctly rejected that claim (ALJD 16). As he stated, "there is no credible record evidence of fear by bargaining unit employees of harassment or violence from the Union if their addresses and telephone numbers are provided." The Administrative Law Judge further observed (ALJD 16) that testimony from Human Resources Director Witherell "made clear that the Respondent and the Union have had a positive working relationship since on or before October 2014 and made no reference in her emails to Meisinger that anyone at Respondent harbored a clear and present fear of harassment from the Union's information request."

The Company also asserts (Br 38-39) that the Union could have used alternative methods for communicating with unit employees, such as posting on bulletin boards, sending emails to employees, having stewards reach out to employees, or talking to

employees during monthly Union meetings. The Company ignores the settled case law establishing that the fact that a union may be able to obtain the requested information from a source other than the employer or by means other than requesting it from the employer “does not alter or diminish the obligation of the [e]mployer to furnish relevant information.” Watkins Contracting, Inc., 335 NLRB at 225. “It is clear that an employer may not refuse to furnish relevant information to a union on the ground that the union has an alternative source or method of obtaining the information.” Land Rover Redwood City, 330 NLRB at 331 n.3 (1999). The Administrative Law Judge correctly relied on this established principle (ALJD 17) in rejecting the Company’s privacy/confidentiality defense.

The Company relies (Br 36) on cases – such as Chicago Tribune Co. v. NLRB, 79 F.3d 604 (7th Cir. 1996), Grinnell Fire Protection Systems Co. v. NLRB, 272 F.3d 1028 (8th Cir. 2001), and JHP & Associates, LLC v. NLRB, 360 F.3d 904, 911-912 (8th Cir. 2004) - in which courts determined that unions were not entitled to home addresses of striker permanent replacement employees, where the employers offered to provide reasonable alternatives to producing the requested information. In such cases, courts have employed a balancing test in which the relevant factors include the union’s need for the requested contact information and its ability to obtain the information from other sources. These cases, however, involved considerations that are not present here, such that these cases are easily distinguishable.

In Chicago Tribune, the court determined that the striker replacements had a legitimate privacy and safety interest in protecting their home addresses, based on “the

pattern of violence that surrounded the strike” and “in light of threats of violence the replacements endured.”

In Grinnell, the court decided that, even though there was no specific evidence of threats of violence, the replacements had a “greater privacy interest in protecting the location of their homes” than the union had in getting those addresses, especially since the union had other means available to it for contacting the replacement workers (such as visiting work sites or otherwise contacting them at work).

In JHP, the court relied on the rationale set forth in Chicago Tribune and Grinnell in deciding that the employer was not obligated to provide the union with requested home addresses and phone numbers for striker replacements.

Here, the evidence is clear that the unit did not include any striker replacements and that there was no recent history of strikes or similar labor unrest and tension. (Tr 127:11-13; 162:8-10).

Moreover, the Administrative Law Judge specifically found (ALJD 18) that “this case does not present credible evidence of any relevant fear of safety or concern of retribution,” that “Respondent has not proven any relevant reasonable ‘clear and present danger of harassment,’” and that “there is no credible evidence here that the bargaining unit employees requested anonymity or that Respondent ever promised confidentiality as to the identities, addresses, and telephone numbers of the bargaining unit employees.”

As the Administrative Law Judge stated (ALJD 17-18), “the specific facts and circumstances here are distinguishable from the facts in the cases cited by Respondent against producing the requested information . . . , cases with facts involving ongoing

strikes and labor unrest with threats of violent conduct against striker permanent replacement workers and the potential for misuse of the information not present in this case where the Union's new assistant business manager simply wanted to update the Union's records in response to ineffective alternatives with Respondent and member and non-Union member bargaining unit employees." Given the vastly different factual settings distinguishing those cases from the present one, those cases are not controlling. See, e.g., River Oak Center for Children, 345 NLRB at 1335-1336 (distinguishing Chicago Tribune, Grinnell, and JHP on the grounds that "[e]ach involved a union's request for the addresses of striker replacements or nonstriking union employees in the context of an ongoing strike and labor unrest, where there were threats of violence and the potential for misuse of the information [whereas h]ere, in contrast, the request was made in the context of the parties' peaceful renegotiation of a collective-bargaining agreement").

c. The Company's contentions related to Article 8 of the parties' collective-bargaining agreement

The Company makes several related arguments in its brief that are premised on the asserted import of Article 8 of the parties' collective-bargaining agreement. Article 8 provides the following:

Within thirty (30) days after the beginning of each calendar year, the Association will post a seniority list for the Association including all employees in the bargaining unit, their classifications and their date of hiring. Any dispute regarding the seniority posting shall be taken up by the bargaining committee and representatives of the Association within thirty (30) days after this posting.

Specifically, the Company contends (Br 17-18, 25-29) (1) that the Union, by seeking to obtain from the Company the unit employees' contact information, improperly

attempted to unilaterally modify Article 8; (2) that the Union, by agreeing to the language in Article 8, waived its right to obtain unit employees' home addresses and phone numbers; and (3) that the Union, by negotiating and agreeing to Article 8, fully exercised its right to bargain over what information it could receive from the Company about unit employees. As discussed below, the Administrative Law Judge properly rejected each of these contentions.

Before addressing the specifics of each of those contentions, though, a point needs to be made about the Company's general misunderstanding about the relationship between the Act and the parties' collective-bargaining agreement, with regard to information requests. As the Company made quite clear in its brief (Br 1, 4, 26-27), its view is that due to Article 8 the Union is not entitled to any information about bargaining unit employees except for the information contained in the annual posting set forth in that article. For example, the Company states (Br 1) that "[t]he parties have specifically negotiated a provision in their collective bargaining agreement that outlines the information the Union is entitled to receive." Similarly, the Company states (Br 4) that "[t]he information identified in Article 8 is the only employee information the Union is entitled to receive." Also, it states (Br 26-27) that "[o]n its face, Article 8 outlines the entirety of information the Union is entitled to receive regarding employees."

Thus, it is quite clear that the Company has a fundamental misunderstanding about the source of the employer obligation to provide unions with requested information about unit employees. The Company submits that the Union is not entitled to any information about unit employees unless the parties' collective-bargaining agreement affirmatively and expressly provides for such information to be provided.

That view, however, is mistaken. It is clear as a matter of law that the Act, not a labor agreement, is the basis of a union's right to information about unit employees. See Chapin Hill at Red Bank, 360 NLRB 116, 122-123 (2014); Lithographers Local One-L (Metropolitan Lithographers Ass'n), 352 NLRB 906, 915 (2008); Helca Mining Company, 248 NLRB at 1344; American Standard, 203 NLRB 1132, 1132 (1973).

That said, we now address each of the specific contentions that the Company makes regarding Article 8.

1. Asserted unilateral modification of Article 8

As the Administrative Law Judge correctly determined (ALJD 18-19), the Union's information request did not amount to an effort to change Article 8. Clearly, the purpose of Article 8 was to allow employees to see, annually, the seniority roster so that they could be aware of the recorded seniority dates and correct any mistakes in the roster.

As the Administrative Law Judge found (ALJD 18-19), "while Article 8 . . . provides that Respondent shall annually post a list of employee names, classifications and hire dates, Article 8 is completely silent with respect to the home addresses and telephone numbers of unit employees." Similarly, the Administrative Law Judge stated (ALJD 18-19) this Article 8 provision is "silent on the subject of furnishing unit employees' addresses and telephone numbers to the Union" and that the information request was "not a dispute regarding the Seniority List posting." As he stated (ALJD 19), the information request was "a separate dispute concerning Respondent's failure to produce the bargaining unit employees' addresses and telephone numbers which are not mentioned in the CBA and has nothing to do with employee seniority "

In light of Article 8's complete silence regarding requests for unit employees' contact information, the Administrative Law Judge was amply justified in concluding (ALJD 19) that "there is no basis to claim that the providing of unit employees' phone numbers and home addresses is covered by Article 8 of the contract." Similarly, there is absolutely no basis for claiming that the Union's request for unit employees' home addresses and phone numbers was an attempt to change the existing contract provisions. Article 8 simply does not apply to or cover the issue of the Company providing the Union with requested unit employees phone numbers and home addresses.

2. Asserted waiver of the Union's right to unit employee information

According to the Company, by agreeing to the Article 8 language quoted above, the Union waived its right to obtain other information about the unit employees.

The Administrative Law Judge (ALJD 19-20) properly rejected the Company's waiver argument. Relying on cases including Metropolitan Edison Co. v NLRB, 460 U.S. 693, 708 (1983), and Provena St. Joseph Medical Center, 350 NLRB 808, 811 (2007)), the Judge correctly stated (ALJD 20) that "[t]he waiver of the right to information relevant to the fulfillment of a union's statutory duty of representation of unit employees by a collective bargaining agreement is not lightly inferred and must be 'clear and unmistakable' in express terms and not by implication and not merely by omission from the contract." Applying this strict waiver standard, the Administrative Law Judge found (ALJD 20) that the Article 8 language did not waive the Union's right to obtain unit employees' home addresses and phone numbers. As he stated (ALJD 20), "there is no language in the CBA expressly and unmistakably mentioning or specifically

waiving the Union's right to unit employees' names, addresses, and telephone numbers."

The Company's view flatly contradicts the established waiver standard. Under the applicable case law, a union is presumed to be entitled to information about unit employees, and it foregoes that right only by clearly and unmistakably waiving it. The Company, however, would allow the Union to have that information only if the collective-bargaining language expressly states that the Union can obtain it. The Board cannot accept such a clearly erroneous view of the waiver doctrine, for it converts the source of the Union's right to information about unit employees from the Act itself to only the terms of the parties' collective-bargaining agreement.

3. Assertion that the Union does not have a right to the unit employees' contact information because it exercised its right to bargain over information by negotiating and agreeing to Article 8

The Company contends (Br 24-26) that the Union, by negotiating and agreeing to Article 8, fully exercised its right to bargain over what information it could receive from the Company about unit employees. Although this contention sounds like a waiver argument, the Company states (Br 25-26) that this particular contention is different from its waiver argument.

Put simply, the argument does not make any sense. The argument jumps from the fact of agreement over posting of the seniority list to the claim that because the Union exercised its right to bargain over terms of the posting of a seniority roster that the Union no longer has a right under Section 8(a)(5) and (1) to obtain employee contact information (or, as explained above, to any information about unit employees). There is no connection, however, between the agreement in Article 8 over provisions for

posting the seniority list and the Union's entitlement to unit employees' contact information.

d. The Company's contention that Section 10(b) barred issuance of complaint

The Company contends (Br 15-16) that the Administrative Law Judge erred in rejecting the defense that Section 10(b) barred issuance of complaint (ALJD 12-13). However, as the Administrative Law Judge found (ALJD 12-13), the Union requested unit employee home addresses and phone numbers on October 29, 2015, and shortly thereafter. When the Company refused to provide this requested information, the Union filed its charge on January 5, 2016, which was well within the six-month limitations period set forth in Section 10(b). Accordingly, Section 10(b) did not preclude issuance of complaint.

In support of its contention that Section 10(b) barred complaint, the Company asserts that the Union first requested the information on March 31, 2015, and the Company denied that request on April 2, 2015. The Company argues that Section 10(b) applies here because the denial on April 2, 2015, was more than six months before the Union filed its charge on January 5, 2016.

The Administrative Law Judge, however, quite properly rejected the Company's contention. He correctly determined (ALJD 12-13) that the Union's request on March 31, 2015, and the Company's denial on April 2, 2015, were not the controlling dates for commencement of the relevant six-month statute of limitations period, because that earlier information request was separate from the one at issue in this case. As the Administrative Law Judge stated (ALJD 13), the Union made "an independent

information request beginning on October 29 to later become the November 6 information request at issue here.”

Furthermore, as the Administrative Law Judge found (ALJD 13), the information request in March 2015 was materially different from the one that the Union made in October 2015. The March 2015 information request was for unit employees’ names, classifications, and hire dates. (GCX 6(c)). The March 2015 information request did not include employees’ home addresses and phone numbers. In contrast, the October/November 2015 information request was for employee home addresses and phone numbers.

In any event, a union is entitled to obtain from the employer updated, current information about unit employees’ addresses and phone numbers, even when the employer provided such information at earlier times. See River Oak Center for Children, 345 NLRB at 1335; Watkins Contracting, Inc., 335 NLRB at 222 n.1, 224-225. This is so because “[i]t is reasonable to assume that there was employee turnover, changes in address, phone numbers, and job classifications.” Watkins Contracting, Inc., 335 NLRB at 225 (citing Long Island Day Care Services, 303 NLRB 112, 130 (1991)). Accord River Oak Center for Children, 345 NLRB at 1335.

e. The Company’s contention that this dispute must be deferred to the parties’ contractual grievance and arbitration procedure

The Company contends (Br 18-23) that the Administrative Law Judge erred by declining to defer this matter to the parties’ contractual grievance and arbitration procedure (ALJD 12). The Company’s position is meritless.

In order to avoid a two-tiered arbitration process, deferral of information request cases is not appropriate. See United Technologies Corporation, 274 NLRB 504 (1985);

United States Postal Service, 302 NLRB 918 (1991). As the Administrative Law Judge recognized (ALJD 12), the Board's longstanding policy and practice is not to defer disputes about information requests. See Finley Hospital, 362 NLRB No. 102, slip op. at 8 n.18 (June 3, 2015); Lenox Hill Hospital, 362 NLRB No. 16, slip op. at 8; Chapin Hill at Red Bank, 360 NLRB 116, 116 n. 2, 122-123.

The Company asserts (Br 23) that the Administrative Law Judge erred by not considering the Region's reason for not deferring the case. The Company contends that the Region improperly refused to defer the case because an arbitrator would have ruled in the Company's favor and the Region did not want that outcome. There is absolutely no credible factual support for that assertion. "Normally, there is a presumption of administrative regularity, i.e., that an administrative agency follows its own procedures." See Redway Carriers, 274 NLRB 1359, 1386 n.41 (1985). The Company failed to rebut that presumption.

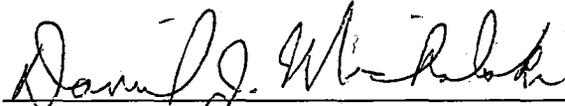
The Company also contends (Br 23) that the Administrative Law Judge erred by sustaining a General Counsel objection to the Company's attempt to introduce inadmissible evidence relating to the Company's claims about the Region's reason for not deferring. The Judge's evidentiary ruling was correct. The Company's attorney, Ray Deeny, asked Chief Operating Officer Wadsworth about what Deeny had told him about a statement that the Region's investigator allegedly had made to Deeny. (Tr 166-169). The General Counsel objected, and the Judge correctly sustained the objection. (Tr 166-169).

CONCLUSION

For the foregoing reasons, the General Counsel respectfully requests that the Board affirm the Administrative Law Judge's finding of a violation.

Dated at Denver, Colorado, this 9th day of May, 2017

Respectfully submitted,



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**AFFIDAVIT OF SERVICE OF GENERAL COUNSEL'S ANSWERING BRIEF TO
RESPONDENT'S STATEMENT OF EXCEPTIONS AND BRIEF IN SUPPORT OF
EXCEPTIONS**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **May 9, 2017**, I served the above-entitled document(s) by **E-file, E-mail** and **regular mail** upon the following persons, addressed to them at the following addresses:

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Signature