

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 20

4 YP ADVERTISING & PUBLISHING LLC

5 vs.

6 INTERNATIONAL BROTHERHOOD OF
7 ELECTRICAL WORKERS, LOCAL 1269

CASE NOS. 20-CA-147219
20-CA-167875
20-CA-176151
20-CA-177029
20-CA-181140
20-CA-181554
20-CA-181851

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14 **RESPONDENT YP ADVERTISING & PUBLISHING LLC'S POST-HEARING BRIEF TO**
15 **THE HONORABLE AMITA BAMAN TRACY, ADMINISTRATIVE LAW JUDGE**

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Cases

Boehringer Ingleheim VetMedica, Inc.,
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Champion Parts Rebuilders, Northeast Div. v. NLRB,
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Dallas & Mavis Forwarding Co.,
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Good Life Beverage Co.,
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Heck's, Inc.,
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K-D Mfg. Co.,
169 NLRB 57 (1968)26

Leland Stanford Univ. & Stanford Univ. Hosp.,
240 NLRB 1138 (1979)28

TABLE OF AUTHORITIES
(CONTINUED)

PAGE(S)

1
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3 *Redway Carriers,*
4 274 NLRB 1359 (1985)23, 24
5 *Renal Care of Buffalo, Inc. & Commc'n Workers of Am., Local 1168,*
6 347 NLRB 1284 (2006)26
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9 *Union Carbide Corp., Nuclear Div.,*
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11 *Union Elec. Co.,*
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14 339 NLRB 585 (2003)20

14 **Statutes**

15 FMLA5, 11, 12
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17 Firmwide:147775160.2 071644.1055
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1 **I. INTRODUCTION AND OVERVIEW**

2 Pursuant to section 102.42 of the National Labor Relations Board’s Rules and Regulations,
3 Respondent YP Advertising & Publishing LLC (“YP” or “the Employer”) submits this post-hearing
4 brief regarding the consolidated Complaints issued by the General Counsel in the above-captioned
5 matters. The General Counsel alleges that YP has engaged in the following conduct, all of which
6 YP denies:

7 (1) Unreasonably and unlawfully delayed production of information requested by
8 International Brotherhood of Electrical Workers Local 1269 (“the Union”) on February 2, 2015,
9 relating to Sales Performance Agreements (“SPAs”). (Complaint ¶7(a)–(d)), (Charge 20-CA-
10 147219);

11 (2) Unreasonably and unlawfully delayed production of information requested by the Union
12 on October 5, 2015, relating to the Employer’s newly proposed performance plan (commonly
13 referred to as “STARS”). (Complaint ¶7(c)–(b)), (Charge 20-CA-167875);

14 (3) Unreasonably and unlawfully delayed production of information requested by the Union
15 on January 14, 2016, relating to bargaining unit member John Mimiaga. (Complaint ¶7(e)–(g)),
16 (Charge 20-CA-181851);

17 (4) Unreasonably and unlawfully delayed production of information requested by the Union
18 on February 18, 2016 and March 21, 2016, relating to bargaining unit member Carolyn Cook
19 (Complaint ¶7(h)–(k)); (Charge 20-CA-177029);

20 (5) Unreasonably and unlawfully delayed production of information requested by the Union
21 on March 23, 2016, relating to bargaining unit member Kathy Charles (Complaint ¶7(l)–(m));
22 (Charge 20-CA-176151);

23 (6) Dealt directly with bargaining unit employees, and intentionally bypassed the Union, by
24 allowing two clerical assistants, Carol Peterson and Jessica Durante, to work remotely after the
25 Employer closed two Northern California offices. (Complaint ¶ 9(a)–(b)), (Charge 20-CA-181554);

26 (7) Dealt directly with bargaining unit employees, and intentionally bypassed the Union, by
27 asking bargaining unit employees to sign an exception agreement, relating to a direct mail marketing
28 product called ypDirect, and agree to sell ypDirect at a lower commission rate than that set forth in

1 the parties' collective bargaining agreement. (Complaint ¶ 9(c); 10(a)-(c)), (Charge 20-CA-181140);
2 and

3 (8) Unilaterally implemented a reduced commission rate for sales of the ypDirect product.
4 (Complaint ¶ 9(c); 10(a)-(c)); (Charge 20-CA-181140).

5 To determine whether the Employer's responses to the Union's five information requests at
6 issue were unreasonably delayed, the Board must examine the Employer's good faith efforts to
7 respond to the Union's requests, and, the larger context in which the requests were made. The Union
8 propounded a staggering 107 information requests, some with as many as 33 subparts, on the
9 Employer during the 19-month period at issue in the Complaint, *i.e.*, February 2015 to August 2016.
10 In response, the Employer tasked senior Human Resources and Labor Relations personnel with
11 responding to the information requests and implemented a system to track the Union's requests.
12 Nevertheless, the Union frequently set unilateral response deadlines, some as short as two days,
13 without any prior consultation with the Employer to determine whether the deadline was reasonable.
14 Despite repeated requests by the Employer, the Union refused to submit its information requests to
15 the senior Human Resources or Labor Relations personnel. These personnel had competing
16 obligations to provide personnel services to the Employer's bargaining unit employees and to the
17 Union. The provision of these services placed demands on the Labor Relations and Human
18 Resources personnel which necessarily affected their response time. Moreover, many of the
19 information requests at issue required the Employer to seek responsive information from multiple
20 individuals in multiple departments. Considering the larger context in which the Union's requests
21 occurred, YP acted in good faith and made demonstrative efforts to timely respond to the Union's
22 information requests.

23 With respect to the direct dealing allegations, the General Counsel must show that the
24 Employer acted to the exclusion of the Union and with the intent to circumvent the Union. The facts
25 show the opposite. The Employer's decision to permit two clerical assistants to work remotely
26 following the closure of their respective offices is entirely consistent with the Union's bargaining
27 proposal to allow all clerical employees to work remotely. When the Union showed the Employer's
28 negotiators that Sales Department personnel had issued an unauthorized memorandum to employees,

1 asking them and Union representatives to sign “exception agreements” allowing the payment of a
2 reduced commission rate, the Employer immediately issued a clarifying memorandum, assuring
3 employees that the Employer would not directly deal with employees. Two weeks later, and
4 following discussion about ypDirect at the negotiating table, the Employer announced that YP would
5 cease selling the ypDirect product until the parties could collectively negotiate new ypDirect
6 commission rates. At each turn, the Employer communicated with the Union, and the General
7 Counsel provides no evidence to suggest that the Employer intentionally sought to bypass the Union.

8 **II. FACTUAL BACKGROUND**

9 YP offers local search, digital and print advertising that connects consumers and businesses
10 through internet, mobile and print platforms, including YP.com. (Tr.182:4–14). Approximately 150
11 of YP’s Northern California sales representatives and clerical assistants are represented by the
12 Union. (Tr. 44:5–7). Sales representatives meet with YP’s customers directly and participate in
13 campaigns to sell advertising services. (Tr. 182:15–183:5). Clerical assistants work in an
14 administrative role to support sales representatives. (Tr. 58:2–6). YP and its predecessors have had a
15 remarkably longstanding relationship with the Union. As acknowledged in the Complaint, the
16 parties’ relationship is over 50 years old. (Complaint ¶ 6(b)).

17 **A. YP Information Request Procedure and Practice.**

18 To say that the Union bombarded the Employer during the time period relevant to the
19 Complaint is no exaggeration. Between February 2015 and August 2016, the Union propounded no
20 fewer than **107** separate information requests on YP. (Resp. Exh. 1; Tr. 188:17–25). This number is
21 even greater when one considers the requests for information made by the Union across the
22 bargaining table. (Tr. 188:17–25). Of those 107 information requests only five are at issue here.
23 (Complaint ¶ 7). Thus, there is no issue with over 95% of the Employer’s responses. In responding
24 to the other 102 requests, YP frequently responded within 3–5 months of the Union’s initial request,
25 the same time frame in which YP responded to the information requests at issue here. (Tr. 264:5–
26 23). When YP was working to respond to the Union’s information requests at issue in this case, it
27 was simultaneously responding to numerous other information requests. (Tr. 264:24–265:2).¹

28 ¹ The best evidence of the overwhelming volume and complexity of the Union’s overlapping

1 The magnitude of the Union's requests is demonstrated by comparison to YP's Southern
2 California region. YP's sales representative and clerical assistant employees who work in the
3 Southern California region are represented by a different local of the same union. During the same
4 time period at issue here, *i.e.*, between February 2015 and August 2016, the Southern California
5 IBEW local propounded, at most, five information requests. (Tr. 199:4–9). This is a stark contrast to
6 the 107 information requests in Northern California and demonstrates the unusual and burdensome
7 nature of the Union's information requests.

8 YP tasked two individuals with the responsibility of responding to the Union's information
9 requests—Debi Kristiansen, YP's Senior Manager of Field Human Resources and Ralph Vitales,
10 YP's Senior Manager of Labor Relations. (Tr. 185:1–186:7; 248:18–25; 237:13–25). The Employer,
11 through Ms. Kristiansen and other management employees, repeatedly informed the Union that all
12 information requests should be submitted to Ms. Kristiansen or Mr. Vitales, in order to allow the
13 Employer to track the Union's information requests and respond in an organized and timely fashion.
14 (Resp. Exh. 3; Tr. 229:12–24; 230:1–9). However, the Union frequently ignored the Employer's
15 requests and instead sent information requests directly to individual managers who were unfamiliar
16 with the information request process and had no direct access to the requested information.

17 In addition to responding to information requests, Ms. Kristiansen and Mr. Vitales performed
18 a number of other job duties. (Tr. 185:6–186:25; Tr. 248:18–249:5). Ms. Kristiansen oversaw human
19

20 information requests during the relevant period is Respondent Exhibit 2. The Employer was unable
21 to fully demonstrate the burdensome nature of the Union's information requests because the ALJ
22 rejected Respondent Exhibit 2. (Tr. 192:18–193:11; 195:1–196:17). The ALJ rejected Respondent
23 Exhibit 2 primarily because it was “burdensome” to the record. (Tr. 195:16–196:4). This objection
24 is not recognized by the Federal Rules of Evidence. Respondent Exhibit 2 is relevant because it
25 shows the volume of the Union's incessant information requests during the time period at issue here.
26 To determine whether the length of time it took YP to respond to the five information requests at
27 issue was reasonable, the ALJ must examine the greater context in which the Union made these
28 requests. *See Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn.9 (1993)(stating that in determining
whether an employer has unlawfully delayed responding to an information request, the Board
considers the totality of the circumstances surrounding the incident, noting “[w]hat is required is a
reasonable good faith effort to respond to the request as promptly as circumstances allow.”). The
temporal overlap between the Union's 102 other information requests and the five information
requests at issue here is highly relevant to the determination of whether the Employer's response
time was reasonable under the Act. Respondent Exhibit 2 showed the overwhelming number of
information requests by the Union between February 2015 and August 2016 (totaling 4,989 pages),
the level of detail contained in the requests and the volume of responsive information YP had to
locate and organize to respond to these requests. (Respondent Exhibit 2; Tr. 197:6–7).

1 resources issues relating to: employee performance; manager performance; employee misconduct;
2 leaves of absence, including short-term disability, long-term disability and FMLA leaves;
3 grievances; employee reviews; ethics and EEO investigations; hiring; staffing; payroll; benefits; and
4 participation in contract negotiations and other collective bargaining matters. (Tr. 185:1–186:7). Mr.
5 Vitales was responsible for: oversight of sales initiative implementation; participation in contract
6 negotiations and other day-to-day interactions with the Union; handling grievances and providing
7 counsel regarding grievances; participation in arbitrations; and management of issues relating to
8 sales representative performance. (Tr. 248:18–25). In short, Ms. Kristiansen and Mr. Vitales were
9 very busy with other matters of importance to the bargaining unit and so were unable to drop
10 everything to respond to the Union’s voluminous requests.

11 Between February 2015 and August 2016, due to the overwhelming number of information
12 requests, and in order to promptly respond to the requests, Ms. Kristiansen and Mr. Vitales devised a
13 system to track the Union’s information requests. (Tr. 187:8–188:16). Ms. Kristiansen and Mr.
14 Vitales created a list which itemized the Union’s information requests and included the date of the
15 request. (Resp. Exh. 1; Tr. 188:1–6; 199:10–19; 245:23–246:1; 246:15–24). Further, because Ms.
16 Kristiansen and Mr. Vitales were infrequently the custodians of the information requested by the
17 Union, which was often maintained within another YP department or local office location, Ms.
18 Kristiansen and Mr. Vitales often had to contact other individuals in the organization to gather
19 responsive information. (Tr. 210:19–211:6; 229:2–11). Ms. Kristiansen and Mr. Vitales also held
20 weekly meetings during which they reviewed the Union’s information requests, discussed the
21 Employer’s progress and followed-up with the appropriate document custodians. (Tr. 210:3–7). The
22 very creation of this system demonstrates the Employer’s good faith in responding to the Union’s
23 voluminous requests.

24 **1. The Union’s February 2, 2015 Information Request—Relating to Sales
25 Performance Agreement Documentation.**

26 On February 2, 2015, Union Vice President Harry Esquivel sent an information request to
27 Ms. Kristiansen and YP San Francisco District Office Sales Manager Gabriel Lopez. (Jt. Exh. 5; Tr.
28 115:3–21). Mr. Esquivel requested eight categories of information and documents, including Sales

1 Performance Agreements (“SPAs”), relating to sales performance meetings between San Francisco
2 sales managers and sales representatives. (Jt. Exh. 5). Two of the eight categories included, “[c]opies
3 of all documents presented to all sales representatives from the San Francisco district office and
4 office(s) for formal and informal, satisfactory, and unsatisfactory SPA coverage’s for each of the last
5 **24 months**” and “[c]opies of coaching notes for sales reps in the San Francisco district office
6 including satellite office(s) with respect to improving standing in SPA’s for all representatives
7 covering the last **24 months**.” (Jt. Exh. 5, emphasis added; Tr. 118:21–24). Mr. Esquivel further set
8 a response deadline and mandated that the Employer respond by February 12, 2015—within 6
9 business days of the Union’s initial request. (Jt. Exh. 5; Tr. 144:1–6). Mr. Esquivel did so arbitrarily
10 and ignored the Employer’s other responsibilities, including competing information requests to
11 which the Employer was simultaneously responding. (*Id.*; Tr. 201:14–15).

12 Following receipt of the Union’s February 2 request, Ms. Kristiansen promptly contacted Mr.
13 Lopez to determine how he would gather and organize the information. (Tr. 202:1–12). In February
14 2015—the time of the requests—the Employer did not require San Francisco district office managers
15 to document performance coverage meetings with sales representatives. (Tr. 202:16–25). As a result,
16 Mr. Lopez had to physically search the San Francisco district office for responsive information—in
17 file cabinets, desk drawers, or any other place that a manager may have stored these types of records.
18 (Tr. 203:1–13, 16). Further, the San Francisco district office experienced a high volume of sales
19 manager turnover prior to the Union’s information request. (Tr. 203:16–24). This required additional
20 efforts by Mr. Lopez to review old files and other documents maintained by sales managers, whom
21 YP no longer employed, to determine whether they contained responsive information. (*Id.*)

22 On February 12, 2015, minutes after the deadline unilaterally set by Mr. Esquivel, while the
23 Employer gathered responsive information, Mr. Esquivel sent a second email to Mr. Lopez and Ms.
24 Kristiansen. (G.C. Exh. 8, pg. 2). In his email, Mr. Esquivel unilaterally dictated a second response
25 deadline, stating the employer had “failed” to provide the information requested, and that the Union
26 “expected” the Company to provide the requested information “no later than February 19, 2015
27 EOB.” (G.C. Exh. 8, pg. 2; Tr. 145:3–13). Again, Mr. Esquivel ignored whether the deadline was
28 reasonable from YP’s perspective. (*Id.*) During his testimony, Mr. Esquivel affirmed that he made no

1 effort to determine what steps the Employer had to take in order to respond to the request, stating
2 “[i]t really isn’t that difficult to get records, or at least it shouldn’t be. That was my assumption when
3 I wrote this.” (Tr. 145:11–13).

4 On February 19, 2015—the same day as Mr. Esquivel’s email—Mr. Lopez followed-up and
5 informed Mr. Esquivel that YP was gathering responsive documents and would provide them to the
6 Union soon. (G.C. Exh. 10, pg. 1). In response, Mr. Esquivel referenced other outstanding
7 information requests and threatened to file an unfair labor practice charge if YP failed to provide the
8 responsive documents by the following day, February 20, 2015. (Resp. Exh. 3). Noticing Mr.
9 Esquivel’s reference to other information requests, Ms. Kristiansen quickly emailed Mr. Esquivel to
10 confirm what other information requests he was referencing in his February 19 email. (Resp. Exh.
11 3). Ms. Kristiansen further expressly requested that the Union copy her on all information requests
12 so she could “support this process” and explained it was “difficult for me to track what’s happened if
13 I am copied on some [information requests] but not others.” (Resp. Exh. 3). Ms. Kristiansen could
14 not effectively oversee the information request process and ensure all requests were being answered
15 if the Union selectively copied her on information requests. (Tr. 206:13–24).

16 On February 20, 2015, the Company sent a partial response to Mr. Esquivel’s information
17 request, providing the requested new hire sales representative information. (G.C. Exh. 9). On March
18 5, 2015, the Company provided a second response with all available and responsive information.
19 (G.C. Exh. 8, pg. 4). Mr. Esquivel testified that he and Union President Stefen Guthrie spoke with
20 Ms. Kristiansen about the February 2 information request shortly thereafter during a March 9, 2015
21 telephone conference. (Tr. 120:5–16). As Mr. Esquivel admitted, Ms. Kristiansen informed the
22 Union that the Employer “had provided **the** information,” indicating that all of the information
23 requested had been provided. (Tr. 120:5–16; 148:22–25)(emphasis added).

24 The Union did not thereafter follow-up with the Employer, or otherwise inform the Employer
25 that its response was inadequate, until two and a half months later on May 26, 2015. (Tr. 208:11–16;
26 G.C. Exh. 10; Resp. Exh. 4; Jt. Exh. 6). On May 28, 2015, Ms. Kristiansen responded to the Union,
27 explained that the Employer had struggled to “find information that was responsive to [the Union’s]
28 request, primarily because of the turnover in managers in the San Francisco office,” and affirmed

1 that the Employer would “commit to a further search” and “provide any additional documents . . .
2 that I can locate as soon as the search is completed.” (Jt. Exh. 6). Mr. Lopez performed the
3 additional search but was unable to find any further responsive information. (Tr. 209:6–16).²

4 The General Counsel did not introduce any evidence that the delay in responding to the
5 Union’s request for information prejudiced the Union or the members of the bargaining unit.

6 **2. The Union’s October 5, 2015 Information Request—Relating to the**
7 **Employer’s Newly Proposed Performance Plan (“STARS”).**

8 On September 11, 2015, consistent with the Employer’s obligations under the collective
9 bargaining agreement, the Employer sent the Union a proposed performance plan, commonly
10 referred to as the “STARS” performance management plan, which it intended to implement over the
11 coming months. (Resp. Exh. 11). YP’s Vice President, Deputy General Counsel and chief contract
12 negotiator Keith Halpern informed the Union that the Employer was “happy to review the proposed
13 plan” with the Union and “take the union’s feedback.” (Resp. Exh. 11).

14 On October 5, 2015, at 11:26 p.m., Mr. Esquivel sent an information request to Mr. Halpern
15 regarding the Employer’s newly proposed performance plan. (Jt. Exh. 7; Tr. 122:16–25). Mr.
16 Esquivel’s request more closely resembled an interrogatory used in civil litigation than a typical
17 information request. It included 33 subparts, one of which requested that the Employer provide “the
18 Union with the ‘cost of sale’ for Key, Premise and Telephone Channels, including but not limited to,
19 revenue generated, commissions paid and any and all metrics used by the company to make a
20 determination barring sales under \$300/mo.” (Jt. Exh. 7, pg. 2, point 13). Mr. Esquivel set an
21 arbitrary response deadline—“October 7, 2015 EOB”—providing the Employer with a **two-day**
22 response window. (Jt. Exh. 7; Tr. 142:3–12). During his testimony, Mr. Esquivel affirmed that he did
23 not ask whether the Company would be able to respond by the proposed deadline. (Tr. 143:2–16).

24 In the following months, the Employer, through Mr. Vitales, frequently met with Mr. Guthrie
25 to discuss implementation of the STARS performance plan. (Tr. 252:5–253:16). Between October
26 2015 and January 2016, Mr. Vitales and Mr. Guthrie often discussed the plan, including the Union’s

27 _____
28 ² The parties stipulated that YP responded to this information request on May 28, 2015. (Jt. Exh. 1,
point 8).

1 concerns regarding: the proposed performance measurement period, the duration of discipline on an
2 employee's record and the performance review board process. (*Id.*) At no time during these
3 communications did Mr. Guthrie mention the earlier information request. (Tr. 252:5–253:16).

4 On January 14, 2016, following appropriate notification periods, Mr. Halpern informed the
5 Union that the Company intended to implement the STARS performance improvement plan within
6 one week. (G.C. Exh. 12, pg. 3). In response, the Union, for the first time since its initial October 5
7 request and despite repeated conversations with the Employer regarding the plan, informed the
8 Employer that it had failed to respond to the Union's October 5 information request. (G.C. Exh. 12,
9 pg. 1). As soon as the Union raised the outstanding information request, the Employer halted
10 implementation the STARS performance plan and informed the Union that it would hold off on
11 implementing the plan until it responded to the Union's information request. (Tr. 251:5–11; 252:2–4;
12 Resp. Exh. 12). The Company thereafter promptly responded to the Union's information request on
13 January 20, 2016. (Resp. Exh. 13).³

14 During the same time period, the Employer was handling grievances, participating in effects
15 bargaining regarding the closure of its Pleasanton, California telesales facility, and responding to
16 multiple other Union information requests. (Tr. 254:13–23).

17 The General Counsel did not introduce any evidence that the delay in responding to the
18 Union's request for information prejudiced the Union or the members of the bargaining unit.

19 **3. The Union's January 14, 2016 Information Request—Relating to**
20 **Bargaining Unit Member John Mimiaga.**

21 On January 14, 2016, the same date on which the Company informed the Union that it
22 intended to implement the STARS performance plan discussed above, Mr. Esquivel sent an
23 information request to YP Area Sales Manager William Poulin requesting discipline and
24 performance information relating to YP sales representative John Mimiaga. (Jt. Exh. 8; Tr. 126:12–
25 22). Mr. Esquivel asked Mr. Poulin to provide the responsive information before the “review board
26 meeting” (performance review meeting), during which YP would evaluate Mr. Mimiaga's

27 ³ The parties stipulated that YP responded to this information request on January 20, 2016. (Jt. Exh.
28 1, point 9).

1 performance. (*Id.*) The request included four subparts and requested information during the
2 preceding 24-month period. (*Id.*) On January 15, 2016, Mr. Poulin provided some of the information
3 requested by the Union—Mr. Mimiaga’s calendar entries that corresponded to the relevant
4 performance review period. (Tr. 128:4–6; G.C. Exh. 13).

5 The Union did not follow-up with the Employer regarding its January 14 information request
6 until **six months later**, on July 18, 2016. (Jt. Exh. 9). Importantly, despite Ms. Kristiansen’s
7 previous request on February 19, 2015, Mr. Esquivel did not copy Ms. Kristiansen or Mr. Vitales on
8 the information request. (*Id.*; Resp. Exh. 3; Tr. 228:4–11). Ms. Kristiansen was unaware of the
9 information request in January 2016. (Tr. 228:22–24). Ms. Kristiansen first became aware of the
10 Union’s request in July 2016 after the Union’s second information request was forwarded to her. (Tr.
11 230:10–14). The Employer thereafter provided a prompt response on August 12, 2016 and August
12 18, 2016 (Resp. Exh. 9 and Resp. Exh. 10; Tr. 129:12–21).⁴

13 The delay in responding to the Union’s request had no impact on Mr. Mimiaga. At the time
14 of the Union’s initial request, Mr. Mimiaga faced no serious discipline. (Tr. 233:8–21). It was not
15 until the Union’s second request that he faced any significant discipline, including potential
16 termination. (Tr. 233:8–20).

17 **4. The Union’s February 18, 2016 and March 21, 2016 Information**
18 **Requests—Relating to Bargaining Unit Member Carolyn Cook.**

19 On February 18, 2016, Union Office Manager Joyce Salvador sent an information request to
20 YP Payroll Manager of Systems-Reporting & Controls Diane Francis. (Jt. Exh. 10; Tr. 172:5–7). Ms.
21 Salvador did not, however, copy Ms. Kristiansen or Mr. Vitales on the February 18, 2016 email.
22 (*Id.*) In her information request, Ms. Salvador forwarded an email from sales representative Carolyn
23 Cook, who complained that her Daily Sales Average (“DSA”) appeared to be inaccurate since her
24 return from a recent leave of absence. (*Id.*) The DSA is a sales representative’s average commission
25 rate which the Employer uses to pay sales representatives for non-selling time, such as vacation. (Tr.
26 283:8–11).

27 _____
28 ⁴ The parties stipulated that YP responded to this information request on August 18, 2016. (Jt. Exh.
1, pg. 1–2, point 10).

1 Ms. Francis did not initially respond to Ms. Salvador's email or consider it to be a formal
2 information request from the Union because Ms. Salvador did not copy Ms. Kristiansen or Mr.
3 Vitales on the email. (Tr. 286:6-24). Ms. Francis had repeatedly informed Ms. Salvador that all
4 information requests should be routed through the Employer's Labor Relations or Human Resources
5 Departments and understood that formal information requests were routed only through those
6 departments. (Tr. 286:25-287:6).

7 Ms. Salvador sent a second email to Ms. Francis regarding the information request relating to
8 Ms. Cook's DSA on March 2, 2016. (Resp. Exh. 14). On her second email, Ms. Salvador copied Ms.
9 Kristiansen. (Resp. Exh. 14). Because Ms. Kristiansen had been copied on the March 2 request, Ms.
10 Francis immediately reviewed YP's payroll systems to determine whether Ms. Cook's DSA was
11 calculated properly. (Tr. 287:21-25). In her initial review, Ms. Francis concluded that Ms. Cook's
12 DSA looked incorrect, but realized she would need to speak with Joanne Merioni, her contact at
13 AMDOCS (the third-party vendor who calculated sales representatives' DSAs) to determine whether
14 AMDOCS could provide her with Ms. Cook's accurate DSA calculation. (Tr. 289:4-12).⁵
15 Throughout March 2016, Ms. Francis attempted to contact Ms. Merioni but was unable to do so
16 because Ms. Merioni was out of the office. (*Id.*)

17 When Ms. Salvador followed-up with Ms. Francis again on March 21, 2016, Ms. Francis
18 promptly responded and explained she was working to provide a response "as soon as possible."
19 (Resp. Exh. 15, 16). When Ms. Salvador emailed Ms. Francis again on March 29, 2016, Ms. Francis
20 explained that she was very busy managing payroll close, a task which included manual
21 recalculation of employee union dues, and hoped to provide a response to Ms. Salvador soon. (Tr.

22 _____
23 ⁵ YP experienced a payroll and leave administrator system change in May 2012 following its break
24 from former parent company AT&T. More specifically, YP converted from AT&T's proprietary e-
25 Link payroll system, AT&T's in-house FMLA administrator and AT&T's outsourced disability
26 administrator (Sedgwick), to YP's own payroll system, called "E-Time" (administrated by ADP),
27 and FMLA administrator (Hartford). This switch caused information channels, or "data feeds" to
28 break down between the new payroll and old leave administrator systems (Tr. 281:18-282:10;
282:14-18). AMDOCS automatically calculated Ms. Cook's DSA based on data that was provided
to it from other systems, such as the Employer's leave and payroll administrators. (Tr. 283:12-16;
284:1-6). When the Employer changed systems, the new leave and payroll administrator systems
were not able to effectively communicate Ms. Cook's leave dates to AMDOCS, which in turn,
caused the formula AMDOCS used to automatically generate Ms. Cook's DSA to malfunction.

1 293:1–8). Oversight of payroll close and union dues calculations are time consuming processes and
2 part of Ms. Francis’s regular job duties. (Tr. 294:6–295:7). Ms. Francis further informed Ms.
3 Salvador that she was still waiting to hear back from her AMDOCS contact, Ms. Merioni, regarding
4 Ms. Cook’s DSA question. (Tr. 293:1–8; Resp. Exh. 16).

5 Ms. Salvador followed up with Ms. Francis on April 5, 2016, and in response, Ms. Francis
6 reached out again to Ms. Merioni at AMDOCS. (Tr. 297:5–14; Resp. Exh. 17). This time, Ms.
7 Francis spoke to Ms. Merioni, who initially informed Ms. Francis that AMDOCS would be able to
8 provide her with Ms. Cook’s correct DSA by using its automated formula⁶ and assured Ms. Francis
9 that she would follow-up with this information. (Tr. 297:15–23).

10 However, approximately one month later, in early May 2016, Ms. Merioni informed Ms.
11 Francis that AMDOCS was unable to provide an automated, correct calculation of Ms. Cook’s DSA.
12 (Tr. 299:1–15). Ms. Merioni explained that AMDOCS’ inability to perform this calculation was due
13 in large part to an error in Ms. Cook’s underlying leave and payroll earnings data provided by the
14 Employer’s FMLA and payroll administrators.⁷ In short, Ms. Cook’s leave of absence and payroll
15 earnings data were not populating correctly in AMDOCS’ system, which caused AMDOCS to
16 improperly calculate Ms. Cook’s DSA.⁸ After she spoke to Ms. Merioni, Ms. Francis realized she
17 would need to manually recalculate Ms. Cook’s DSA. (Tr. 302:5–8).

18 On May 6, 2016, Ms. Salvador followed-up with Ms. Francis and requested a status update.
19 (Resp. Exh. 17). In response, Ms. Francis called Ms. Salvador and spoke to her the week of May 9,
20 2016. (Tr. 314:14–20; 315:2–4; Resp. Exh. 17). During this call, Ms. Francis explained that she
21 would need to manually calculate Ms. Cook’s DSA, that it was a time-consuming process and that

22 ⁶ Prior to February 2016, AMDOCS used a “legacy code,” *i.e.*, an automated formula which relied
23 on outdated computer programming codes, to automatically calculate a sales representative’s DSA.
(Tr. 284:12–24).

24 ⁷ For a general discussion of the Employer’s change in payroll and FMLA administrators please see
25 footnote 5, *supra*.

26 ⁸ The DSA is a self-feeding calculation that relies on accurate payroll and leave administrator data
27 on a rolling 26 pay period basis. It is self-feeding because it uses each preceding pay period’s DSA
28 to calculate the DSA for the forthcoming pay period, *i.e.*, if the DSA is inaccurate for week 1, it will
be inaccurate for week 2, which will in turn throw off week 3, *etc.* (Tr. 299:18–300:22; 306:17–
307:19).

1 she was working to complete the calculation in a timely manner. (Tr. 303:1–7). Ms. Salvador did not
2 object to or seem upset by Ms. Francis’s explanation. (Tr. 303:20–22).⁹ Accordingly, Ms. Francis
3 worked to manually recalculate Ms. Cook’s DSA throughout May and June 2016. (Tr. 305:4–14). To
4 do so, Ms. Francis pulled Ms. Cook’s earnings data from each pay period during the two-year period
5 preceding Ms. Salvador’s information request, and manually recalculated Ms. Cook’s DSA earnings
6 per pay period through June 2016. (Tr. 306:17–307:19). During this time, Ms. Francis continued to
7 perform her numerous other job duties. (Tr. 306:9–15).

8 The Employer responded to the Union’s request on June, 23 2016. (Jt. Exh. 1, pg. 2, point 1;
9 Resp. Exh. 19, 20; Tr. 309:10–23). On July 8, 2016, based on Ms. Francis’s calculations, YP paid
10 Ms. Cook \$1,825.94, which compensated Ms. Cook for the prior miscalculations in her DSA. (Resp.
11 Exh. 19, p. 2).

12 **5. The Union’s March 23, 2016 Information Request—Relating Bargaining
13 Unit Member Kathy Charles.**

14 On March 23, 2016, Union Business Representative Mike Waltz sent an information request
15 to Ms. Kristiansen and Mr. Vitales, requesting information relating to sales representative Kathy
16 Charles and a grievance the Union was pursuing on her behalf. (Jt. Exh. 11; Tr. 163:12–18). The
17 request included a bullet point list of five information categories, including Employer customer
18 account opening information relating to its Concord, San Jose and San Francisco offices for the
19 preceding **three**-year period and information relating to which of Ms. Charles’s accounts had been
20 reassigned to other sales representatives during the preceding **four**-year period. (Jt. Exh. 11).

21 When she received the Union’s request, Ms. Kristiansen conferred with Mr. Vitales during
22 their weekly information request meeting. (Tr. 210:1–10). They realized that Mr. Waltz’s request
23 would require input from multiple individuals within YP. Accordingly, Ms. Kristiansen and Mr.

24 ⁹ Ms. Salvador testified that this telephone call never took place. (Tr. 322:19–25; 323:1–9). Her
25 testimony lacks credibility. Respondent Exhibit 17 is a date-stamped email that expressly references
26 the conversation that took place between Ms. Francis and Ms. Salvador. (Tr. 303:1–7; 303:14–
27 304:3). Ms. Salvador also testified that Ms. Francis never explained the delay behind Ms. Cook’s
28 DSA calculation. Her testimony again lacks credibility and is contrary to the evidence. (Tr. 177:14–
17). Respondent Exhibit 16 affirms, **in writing**, that Ms. Francis informed Ms. Salvador on March
29, 2016 that she was waiting for her AMDOCS contact to respond and provide Ms. Cook’s DSA
calculation. (Resp. Exh. 16).

1 Vitales contacted **seven** individuals in **four** separate departments to gather the requested
2 information. (Tr. 210:1–10; 216:9–25). These individuals included Allen Wong, YP Sales
3 Operations Manager, to gather information relating to sales representative performance reports, or
4 “rankings” for the Concord, California office during a four-year period¹⁰; Traci Nelson, YP Concord
5 Support Manager; Debra Baskin, YP Market Assignment Manager; Angie McDowell; and Wanda
6 Chiu, YP Commissions Manager, to respond to Mr. Waltz’s second and third bullet points
7 requesting sales representative market reassignment information¹¹; Melissa Hooven, to respond to
8 Mr. Waltz’s fourth bullet point regarding key customer account openings in the Concord, San Jose
9 and San Francisco offices¹²; and Hao Nguyen, for Mr. Waltz’s last bullet point requesting total
10 earnings information for sales representatives vis-à-vis key account openings in the Concord, San
11 Jose and San Francisco offices.¹³

12 On April 27, 2016, Mr. Waltz sent an email to the Employer demanding that YP provide a
13 response to the Union’s request within two business days (“EOB [] April 29”). (Resp. Exh. 5). Mr.
14 Waltz did not consult the Employer before issuing the two day deadline. (Tr. 215:14–17). Ms.
15 Kristiansen responded on May 2, 2016, and affirmed that YP was “working” to provide a response
16 but that multiple components were needed to provide a full response. (Resp. Exh. 5). She further
17 explained that the “older information”—the information dating back to 2012 and 2013—was more
18 difficult to locate. (Resp. Exh. 5; Tr. 217:15–22). On May 12, 2016, Ms. Kristiansen sent a second
19 update to Mr. Waltz, informing him that the Company was “pushing hard” to provide a full response
20 to the Union, but because “[t]wo of the items requested span back 4 years” they were proving
21 “particularly challenging to gather.” (Resp. Exh. 5; Tr. 217:15–22).¹⁴

22 ¹⁰ (Tr. 211:10–25).

23 ¹¹ (Tr. 212:4–213:19; 216:9–25).

24 ¹² (Tr. 214:9–22).

25 ¹³ (Tr. 215:1–8).

26 ¹⁴ Initially, the Employer’s approach in responding to the Union’s information requests was to
27 provide a complete response instead of sending responsive information piecemeal, as the Employer
28 collected it. (Tr. 218:2–11). Although at the time of Ms. Kristiansen’s May 12 email YP had already
gathered some of the responsive information, for the sake of clarity, Ms. Kristiansen waited until the
Employer could provide a more complete response before sending the information to the Union.

1 Because Ms. Kristiansen and Mr. Vitales had to contact seven people across four
2 departments to gather and organize responsive information, the Employer worked throughout May
3 and June 2016 to provide a complete response to the Union. On June 14, 2016 and June 23, 2016,
4 the Employer responded, informing the Union of what information it was able to locate. (Jt. Exh. 1,
5 pg. 2, point 2; Resp. Exhs. 6, 7).

6 The General Counsel did not introduce any evidence that the delay in responding to the
7 Union's request for information prejudiced the Union or the members of the bargaining unit.

8 **B. The Union Proposed All Clerical Assistants Be Permitted to Work Remotely.**
9 **The Employer Acted Consistently with the Union's Proposal.**

10 On December 1, 2015, the Employer informed the Union that it intended to close the
11 Pleasanton, California telesales facility and provided a list of sales representatives and clerical
12 assistants who would be impacted by the closure. (G.C. Exh. 4; Tr. 58:10–13). The parties agreed to
13 participate in effects bargaining relating to the Pleasanton closure. (Tr. 59:6–8; 222:15–20). Shortly
14 thereafter, on February 8, 2016, YP also notified the Union that it planned to change most of its
15 Northern California sales offices, including the Redding and Concord, California offices, to a virtual
16 environment in 2016. (G.C. Exh. 5; Tr. 59:9–16). In contrast to the sales representatives impacted by
17 the Pleasanton closure—whose positions were eliminated by moving the work to facilities in the
18 East—the Northern California sales representatives affected by virtualization remained employed.
19 (Tr. 221:6–25).¹⁵ During a February 17, 2016 bargaining session, the Union made a written proposal
20 that YP allow clerical assistants impacted by the Pleasanton closure to work virtually. (Tr. 132:6–11;
21 61:4–12; 68:13–17; G.C. Exh. 6, pg. 2).

22 During the Pleasanton effects bargaining, in April and May 2016, the parties also engaged in
23 effects bargaining with respect to the closure of the Redding and Concord offices. On April 18,
24 2016, the Union proposed that all clerical assistants impacted by the virtualization of the Redding
25 (Resp. Exh. 5; Tr. 218:2–11).

26 ¹⁵ All work performed at YP's Pleasanton, California telesales facility was transferred to out-of-state
27 facilities following the office closure. (Tr. 223:10–16). Accordingly, there was no remaining clerical
28 assistant work to be performed because all sales representative work had been eliminated. (*Id.*) In
contrast, YP closed physical offices in Redding and Concord but kept the sales representative work
within these regions. (Tr. 221:8–17).

1 and Concord offices be permitted to work remotely. (Tr. 134:1-4; G.C. Exh. 14). On May 4, 2016,
2 the Union renewed that proposal. (Tr. 134:9-25; 135:2-15; 64: 4-18).

3 The Employer rejected the Union's proposal to allow Pleasanton clerical employees to work
4 remotely because there was no work left for the clericals to perform, following the closure of the
5 facility. (Tr. 223:9-16; 241:5-15). The Employer also rejected the Union's April and May 2016
6 proposals to allow all clerical assistants to work remotely because the Employer was concerned
7 about potential liability arising from non-exempt employees working remotely without supervision.
8 (Tr. 223:23-25; 224:1-2; 241:5-15).

9 In June 2016, following the parties' effects bargaining, the Employer permitted Carol
10 Peterson, the only clerical assistant supporting the Redding office, to work virtually on a temporary
11 basis because she lived too far to commute to one of the existing offices on a daily basis. (Tr. 76:20-
12 25; 77:1-9; 225:1-8). YP permitted Ms. Peterson to work remotely because it understood, from the
13 prior collective bargaining negotiations with the Union, that the Union staunchly supported the
14 ability of clerical assistants to work remotely and that such action was consistent with three Union
15 proposals on the same subject. (Tr. 240:17-23; G.C. Exh. 6, G.C. Exh. 13). Ms. Peterson has been
16 permitted to work remotely on a temporary basis to date. (Tr. 76:20-25; 77:1-9).

17 Without knowledge of the Employer's Human Resources or Labor Relations teams, one of
18 the Employer's former Executive Market Managers, Matthew Condensa, permitted his clerical
19 assistant, Jessica Durante, to work remotely following the closure of the Concord, California office.
20 (Tr. 225:11-226:8). Ms. Durante should have worked from the San Francisco office following the
21 Concord closure. (*Id.*) Mr. Condensa's action was unauthorized and contrary to the Employer's
22 directives. (Tr. 247:23-248:1). When the Company learned Ms. Durante had been allowed to work
23 remotely, it promptly informed Ms. Durante that she must instead report to the San Francisco office.
24 (Tr. 67:4-6; 226:1-8). When YP informed Ms. Durante that she would be required to commute to
25 San Francisco, Ms. Durante requested to resign with a severance package. (Tr. 226:9-15). The
26 Union was aware of and approved Ms. Durante's resignation. (Resp. Exh. 8).

1 As Ms. Peterson's and Ms. Durante's work from home was consistent with the Union's
2 bargaining proposals, the fact that they were allowed to work virtually did not adversely affect the
3 Union's status as the employees' bargaining representative.

4 **C. YP Inadvertently Issued Communications Regarding Lower Commission Rates**
5 **for a Direct Mail product, ypDirect, but Clarified During Bargaining That**
6 **Commission Rates Would Remain Unchanged.**

7 On July 15, 2016, the YP Sales Department disseminated a PowerPoint presentation about
8 ypDirect, a direct mail marketing product, without consulting the Employer's Labor Relations or
9 Human Resources Departments. (Tr. 256:10-21; Jt. Exh. 2). The initial July 15 presentation
10 explained that YP was experiencing severely disadvantageous profit margins with respect to
11 ypDirect's present commission rates, and that in order to continue to sell the product at a profit,
12 ypDirect compensation rates would need to be reduced. (Jt. Exh. 2, pg. 4). The July 15 presentation
13 noted that there "is no CBA agreement in place on the ypDirect alternate comp plan" and that a sales
14 representative would need to "gain approvals" from the Union to sell the product. (Jt. Exh. 2, pg. 5).
15 The last page of the presentation included an "exception agreement" which provided signature lines
16 for the sales representative, a Union representative and a sales manager, to confirm that the Union
17 agreed to allow a sales representative to sell ypDirect at a reduced commission rate. (Jt. Exh. 2, pg.
18 6).

19 During collective bargaining negotiations on July 20, 2016, the Union brought the July 15
20 presentation to the attention of Keith Halpern, YP's Vice President, Deputy General Counsel and
21 chief contract negotiator. (Tr. 49:18-20; 256:22-25; 257:1-23). Mr. Halpern informed the Union that
22 there would be no change to the compensation plan. (*Id.*; 259:1-6). As Mr. Guthrie admitted, when
23 the Union asked about the July 15 presentation, Mr. Halpern affirmed that YP had not "intended" to
24 bargain directly with sales representatives. (Tr. 50:24-25). Later that same day, YP sent an email to
25 its sales representatives regarding the July 15 correspondence and clarified that Union input and
26 approval was required before any lower commission rate would be implemented. (Tr. 259:11-15; Jt.
27 Exh. 3). The communication stated: "no changes to your compensation plan may be made without
28

1 union approval and signoff” and “the Company cannot and will not deal directly with our bargained
2 employees regarding compensation and other terms of employment.” (Jt. Exh. 3).

3 As bargaining progressed between the parties in late July 2016, it became increasingly clear
4 that there remained confusion among the sales representatives about ypDirect. During the parties’
5 July 27, 2016 bargaining session, the Union again complained to the Employer regarding the July 15
6 and July 20 correspondence relating to ypDirect. (Tr. 140:1–9). Mr. Halpern, on behalf of the
7 Employer, informed the Union that the Employer would “fix the communication” and clarify the
8 Employer’s position with respect to ypDirect. (Tr. 52:19–22; 140:1–9). During the July 28, 2016
9 bargaining session, Mr. Halpern provided the Union with greater contextual understanding regarding
10 the ypDirect commission rates and explained that the Employer could not offer ypDirect at the
11 present commission rates because it was losing 33 cents on the dollar for each ypDirect product sold.
12 (Tr. 260:19–25). In light of this loss, Mr. Halpern explained that the Employer planned to
13 temporarily suspend sales of the ypDirect product until the parties could collectively negotiate a new
14 compensation plan. (Tr. 140:23–25; 141:1–9; 153:19–25; 154:1–5; 260:2–25). As Mr. Esquivel
15 admitted, Mr. Halpern confirmed during the July 28 bargaining session that it had not been the
16 Employer’s intent to bypass the Union. (Tr. 153:5–8). On August 3, 2016, the parties met again.
17 During this bargaining session, the Employer informed the Union of its intent to reach an agreement
18 with the Union regarding the ypDirect commission rates. (Tr. 260:2–25; 261:2–13).

19 At bargaining the next day, on August 4, 2016, Mr. Halpern once again clarified the
20 Employer’s intent with respect to ypDirect. Mr. Halpern explained that any existing ypDirect sales
21 that were in a sales representative’s pipeline, *i.e.*, ypDirect sales that had been initiated but had not
22 been finalized prior to August 4, would be paid at the existing sales commission rates, consistent
23 with the parties’ collective bargaining agreement. (Tr. 260:2–25; 261:2–13; 261:14–25; 262:1–3).
24 Mr. Halpern also informed the Union that the Employer would send an email to its employees
25 regarding ypDirect to clarify the commission rate issue. (Tr. 262:4–9; Jt. Exh. 4). The Union voiced
26 no objection. (*Id.*).

27 Accordingly, later that same day, the Employer emailed its sales representatives to clarify the
28 July 15 and July 20 communications. (Jt. Exh. 4). In this email, YP Senior Vice President of Sales

1 Matt Crowley explained that as the Employer had “discussed with the Union in negotiations,” the
2 “ypDirect product remains extremely unprofitable at current commission rates.” (*Id.*) Mr. Crowley
3 informed sales representatives that “all new sales of the ypDirect product . . . are temporarily
4 suspended” and that the Employer “will continue to negotiate with the Union concerning an
5 appropriate commission rate for new ypDirect” sales. (*Id.*) Mr. Crowley noted that the only
6 exception to the suspension would be “new sales of ypDirect, resulting from pitches that have been
7 made as of the date of this notification, which will be accepted and paid at the contractual
8 commission rates in the current collective bargaining agreement” and that it would “continue to
9 honor renewals of existing ypDirect programs under the terms of the current collective bargaining
10 agreement.” (*Id.*) The email closed by confirming that the earlier July 15 and July 20
11 communications were “rescinded.” (*Id.*) The suspension of new sales of ypDirect continues to date
12 and will continue until the parties are able to reach an agreement regarding new commission rates for
13 the product. (Jt. Exh. 4: Tr. 93:15–17; 263:1–7).

14 **D. YP Never Implemented a Reduced Commission Rate for Any ypDirect Sale.**

15 Despite the Employer’s August 4, 2016 correspondence rescinding the July 15 and July 20
16 communications, some of the Employer’s sales managers apparently remained confused regarding
17 ypDirect after August 4,¹⁶ and they requested that some sales representatives sign exception
18 agreements, which had been attached to the July 15 and July 20 communications, prior to finalizing
19 a ypDirect sale. For example, YP Area Sales Manager William Poulin emailed an exception
20 agreement to a sales representative on April 3, 2017 under the mistaken impression the Employer
21 was allowing new sales of the ypDirect product and that the exception agreement was required for
22 such a sale. (Tr. 105:2–10; 110:14–16; Jt. Exh. 16; Jt. Exh. 1, pg. 2, point 7).

23 Importantly, however, no sales representative was ever paid at the lower proposed
24 commission rate identified in the Employer’s July 15 or July 20 correspondence. To the contrary, all
25 sales of ypDirect have been paid at the commission rates established in the parties’ collective
26 bargaining agreement—including ypDirect sales for which a sales representative may have signed an

27

¹⁶ See Jt. Exh. 1, pg. 2, points 6–7.
28

1 exception agreement. (Tr. 263:8–14; 269:18–270:17). The exception agreements and the lower
2 commission rates were never implemented, and neither the Union nor bargaining unit employees
3 were prejudiced by the Employer’s issuance of the July 15 email or by the Employer’s request that
4 employees sign exception agreements.

5 **III. ARGUMENT**

6 **A. YP Acted in Good Faith to Timely and Reasonably Respond to All Union**
7 **Information Requests.**

8 The central issue in an information request case is whether the employer acted in good faith
9 in responding to the union’s requests:

10 “In determining whether an employer has unlawfully delayed responding to an
11 information request, the Board considers the totality of the circumstances surrounding
12 the incident . . . [I]t is well established that the duty to furnish requested information
13 cannot be defined in terms of a per se rule. *What is required is a reasonable good*
14 *faith effort to respond to the request as promptly as circumstances allow . . .* In
evaluating the promptness of the response, ‘the Board will consider the complexity
and extent of information sought, its availability and the difficulty in retrieving the
information. . .’”

15 *In Re W. Penn Power Co.*, 339 NLRB 585, 587 (2003)(emphasis added)(citations omitted). In other
16 words, the General Counsel bears the burden of proving that the Employer did not act in good faith.
17 In determining whether the General Counsel has met his burden, the Board considers the totality of
18 the circumstances surrounding the request and the Employer’s response. *Detroit Edison Co. v.*
19 *NLRB*, 440 U.S. 301, 314 (1979) (“The duty to supply information under §8(a)(5) turns upon the
20 circumstances of the particular case . . . and much the same may be said for the type of disclosure
21 that will satisfy the duty.”). Here, the General Counsel has failed to meet his burden.

22 This is not a case where the Employer has failed to respond to a Union’s information request.
23 The parties have stipulated that the Employer responded fully to all of the Union’s many requests.
24 (Jt. Exh. 1). Nor is this a case where the Employer was pursuing an agenda of discrimination against
25 Union activity. There is no allegation that the Employer engaged in any independent 8(a)(1) or
26 8(a)(3) activity or that the Employer negotiated in bad faith with the Union. Indeed, the parties have
27 had a fruitful bargaining relationship for over 50 years. (Complaint ¶ 6(b)).

1 The Employer's good faith is amply seen in its actions. In the face of a blizzard of
2 information requests, the Employer designated two senior officials, the Senior Manager of Field
3 Human Resources (Ms. Kristiansen) and Senior Manager of Labor Relations (Mr. Vitales), to
4 respond to the Union's requests, and they, in turn, set up a system to facilitate the timely handling of
5 those requests. (Tr. 185: 1-186:7; 248:18-25; 237:13-25). This system included the creation of a list
6 which tracked the requests and the establishment of weekly meetings to discuss the information
7 requests. (Resp. Exh. 1; Tr. 187:8-188:16; 210:3-7). When necessary, Ms. Kristiansen and Mr.
8 Vitales followed-up with appropriate personnel to ensure all requested information was collected.
9 Ms. Kristiansen and Mr. Vitales requested that the Union copy them on all information requests, to
10 ensure prompt responses to all requests, and communicated with the Union regarding the status of
11 information requests. (Resp. Exh. 3, Tr. 229:2-24; 230:1-9; 210:19-211:6). In short, YP acted in
12 good faith and made demonstrative efforts to timely respond to the Union's 107 information
13 requests.

14 Moreover, YP faced a burdensome number of information requests—107 during the relevant
15 Complaint period—which affected its ability to respond quickly. (Resp. Exh. 1). The General
16 Counsel finds fault with only five of the 107 responses by the Employer. The Employer's response
17 times to the information requests at issue here, within 3-5 months of the Union's initial request, are
18 consistent with the Employer's response times to the other 102 information requests, about which
19 the General Counsel does not complain. (Tr. 264:5-23). Ms. Kristiansen and Mr. Vitales were
20 performing various other operational job duties, including, *inter alia*, attending collective bargaining
21 negotiations, managing sales initiatives and sales representative performance, participating in
22 grievance and arbitration procedures, and managing payroll and benefits processes, while
23 simultaneously orchestrating the Employer's responses to the Union's 107 information requests. (Tr.
24 185:6-186:25; Tr. 248:18-249:5). The larger context in which the five information requests at issue
25 arose makes clear that the Employer acted in good faith to respond to the Union's requests and that
26 any delay was entirely reasonable under the Act. Not only were the Employer's efforts to respond to
27 the Union's requests in good faith, but the General Counsel made no showing that the Union
28 suffered harm or prejudice as a result of the timing of the five information request responses at issue.

1 See *Union Carbide Corp., Nuclear Div.*, 275 NLRB 197 (1985)(Board deemed a delay of 10.5
2 months justifiable where there was no evidence that the employer could produce the information
3 faster or that the union was prejudiced by the delay); see also *Dallas & Mavis Forwarding Co.*, 291
4 NLRB 980 (1988) (seven-month delay lawful). The explanations for the delays in responding are
5 innocent and do not evidence bad faith.

6 **1. YP Acted in Good Faith in Responding to the Union's February 2, 2015**
7 **Information Request.**

8 Immediately upon receiving Mr. Esquivel's February 2, 2015 information request, which
9 requested information relating to sales performance documentation maintained in YP's San
10 Francisco district office, Ms. Kristiansen reached out to San Francisco District Office Sales Manager
11 Gabriel Lopez to determine the Employer's next steps in response. (Tr. 202:1-12). The information
12 requested by Mr. Esquivel spanned a two-year period and related to information that had been
13 maintained by former San Francisco district office managers, many of whom were no longer
14 employed by YP. Within two weeks of the Union's initial request, Mr. Lopez provided an update to
15 Mr. Esquivel, assuring him that YP was working on providing a response and would send the
16 responsive documents soon. (G.C. Exh. 10, pg. 1). On February 20, 2015, within three weeks of the
17 Union's initial request, the Employer provided a partial response to Mr. Esquivel's request. (G.C.
18 Exh. 9). By March 5, 2015, within a month of the Union's request, the Employer responded to the
19 Union's request and provided all responsive information it had located within the San Francisco
20 district office. (G.C. Exh. 8, pg. 4). Over two and a half months later, on May 26, 2015, Mr.
21 Esquivel followed-up and complained that the Employer's response was incomplete. (G.C. Exh. 10).
22 The Employer responded and subsequently affirmed that no further responsive documents could be
23 located. (Jt. Exh. 6; Tr. 209:6-16).

24 YP has reasonably complied with its obligations to respond to the Union's February 2, 2015
25 information request. As an initial matter, the Employer affirmed that it located all available and
26 responsive information. The Employer reasonably believed it provided a timely response to the
27 Union as of March 5, 2015, because the Union failed to object to the Employer's response until two
28 and a half months later. See *Whitesell Corp.*, 352 NLRB 1196, 1197 (2008) (concluding an employer

1 satisfied its duty to supply information when it provided what it had and the union did not renew its
2 information request or otherwise indicate that it expected more information). Moreover, when the
3 Company was working to respond to the Union’s request, it was simultaneously responding to **five**
4 other information requests between March–May 2015. (Resp. Exh. 1). YP acted in good faith and
5 made demonstrative efforts to timely respond to the Union’s information request.

6 **2. YP Acted in Good Faith in Responding to the Union’s October 5, 2015**
7 **Information Request.**

8 The Employer did not unreasonably delay in providing its response to the Union’s October 5,
9 2015 information request relating to the Employer’s proposed sales performance plan, also known as
10 “STARS.” The Union’s information request was complex, including 33 subparts. (Jt. Exh. 7).
11 Between the Union’s initial request on October 5, 2015 and its subsequent reminder to the Employer
12 on January 14, 2016, the Employer and the Union met frequently to discuss the Employer’s new
13 performance plan. (Tr. 252:5–253:16). At no time during these communications did the Union
14 mention its outstanding information request. (*Id.*) When the Union reminded the employer of the
15 information request on January 14, 2016, the Company provided a prompt response only six days
16 later on January 20, 2016. (Resp. Exh. 13).

17 Additionally, between October 5, 2015 and January 20, 2016, the Employer was working on
18 responding to **14** other information requests. (Resp. Exh. 1). YP acted in good faith and made
19 demonstrative efforts to timely respond to the Union’s information request.

20 **3. YP Acted in Good Faith in Responding to the Union’s January 14, 2016**
21 **Information Request.**

22 Despite Ms. Kristiansen’s previous request that Mr. Esquivel include Ms. Kristiansen or Mr.
23 Vitales on the Union’s information requests, Mr. Esquivel submitted the January 14, 2016
24 information request regarding Mr. Mimiaga directly to Area Sales Manager, William Poulin (without
25 copying Ms. Kristiansen or Mr. Vitales). Because Mr. Esquivel failed to include the proper
26 Employer personnel on his information request, the delay between the Company’s response to the
27 Union’s initial information request on January 14, 2016 and its ultimate response on August 12 and
28 August 18, 2016 should be disregarded. *See Redway Carriers*, 274 NLRB 1359 (1985)(concluding

1 where a request was directed to an inappropriate employer official and not raised again, the Board
2 found no violation in the employer's failure to provide the requested information). Rather, the
3 relevant response window is the amount of time between Mr. Esquivel's second information request
4 on July 18, 2016 and the Employer's responses less than one month later on August 12 and August
5 18, 2016. (Resp. Exhs. 9, 10).

6 Finally, between January 14, 2016 and August 18, 2016, the Company was simultaneously
7 working on responding to: the Union's February 18, 2016 information request relating to Ms. Cook's
8 DSA; the Union's March 23, 2016 information request relating to Ms. Charles; and 73 other
9 information requests that the Union propounded between January 14, 2016 and August 18, 2016.
10 (Resp. Exh. 1). The Employer was also engaged in effects bargaining with the Union regarding
11 virtualization of its Northern California offices between February–June 2016, and contract
12 negotiations between July–August 2016. In short, YP acted in good faith and made demonstrative
13 efforts to timely respond to the Union's information request.

14 **4. YP Acted in Good Faith in Responding to the Union's February 18, 2016**
15 **Information Request.**

16 Despite Ms. Francis's request that the Union submit information requests through Ms.
17 Kristiansen or Mr. Vitales, Ms. Salvador sent the information request in question directly to Ms.
18 Francis on February 18, 2016. For the same reasons discussed above, the Union's initial request
19 should be disregarded and the Employer's relevant response time should be measured between
20 March 2, 2016 (when the Union copied Ms. Kristiansen on its request) and the Employer's response
21 on June 23, 2016. *See e.g., Redway Carriers*, 274 NLRB 1359 (1985). Moreover, although it took
22 the Employer approximately four and a half months to respond to the Union's request, its response
23 time was reasonable considering the laborious circumstances under which Ms. Francis was forced to
24 manually recalculate Ms. Cook's DSA.

25 Ms. Francis worked diligently to contact her AMDOCS representative throughout March
26 2016, but was unable to do so due to conflicting schedules. When Ms. Francis spoke with her
27 AMDOCS contact in April 2016, she was initially told that AMDOCS anticipated providing Ms.
28 Francis with an automated solution and would follow-up with Ms. Cook's corrected DSA.

1 Unfortunately, by May 2016, Ms. Francis learned that AMDOCS would be unable to assist her with
2 the calculation and so she undertook the lengthy process of manually calculating Ms. Cook's DSA,
3 which required review of Ms. Cook's earnings information for the preceding two-year period.
4 Throughout this process, Ms. Cook updated Ms. Salvador over the phone and via email explaining
5 that her response to the information request would be delayed based on the manual calculation she
6 had to perform.

7 Finally, between February 18, 2016 and June 23, 2016, in addition to responding to the
8 Union's March 23, 2016 information request relating to Ms. Charles and preparing for effects
9 bargaining, the Employer was working to respond to 37 other information requests propounded by
10 the Union. YP acted in good faith and made demonstrative efforts to timely respond to the Union's
11 information request.

12 **5. YP Acted in Good Faith in Responding to the Union's March 23, 2016**
13 **Information Request.**

14 The Employer acted in good faith in responding to Mr. Waltz's March 23, 2016 information
15 request relating to Ms. Charles. Mr. Waltz requested information relating to key account and market
16 reassignment history throughout Northern California for the three-year period preceding the
17 information request. The Employer took prompt action and contacted seven individuals in four
18 departments to gather the responsive information. (Tr. 210:3-10; 216:9-25). Moreover, in the face
19 of Mr. Waltz's repeatedly setting unilateral response deadlines, Ms. Kristiansen provided frequent
20 status updates to the Union, affirming that the Employer was "working" to provide a full response as
21 soon as possible but that the sheer volume of information requested, especially as it related to the
22 older information, was proving challenging to gather. (Resp. Exh. 5). The Employer provided the
23 Union with a response as soon as it was reasonably able to do so—on June 14 and June 23, 2016.

24 The Employer's four-and-a-half-month response time is reasonable, especially in light of the
25 number of individuals involved in gathering responsive information. *See Union Carbide Corp.,*
26 *Nuclear Div.*, 275 NLRB 197 (1985)(Board deemed a delay of 10.5 months justifiable where there
27 was no evidence that the employer could produce the information faster); *see also Dallas & Mavis*
28 *Forwarding Co.*, 291 NLRB 980 (1988) (seven-month delay lawful). Moreover, at the time the

1 Employer was organizing its response to the March 23, 2016 information request it was
2 simultaneously working to respond to 27 other information requests between March 23, 2016 and
3 June 23, 2016. (Resp. Exh. 1). In short, YP acted in good faith and made demonstrative efforts to
4 timely respond to the Union's information request.

5 **B. For Actionable Direct Dealing, the General Counsel Must Prove Intent To**
6 **Bypass the Union.**

7 The established criteria for finding that an employer has engaged in unlawful direct dealing
8 are: "(1) that [the employer] was communicating directly with union-represented employees; (2) the
9 discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of
10 employment or undercutting the Union's role in bargaining; and (3) such communication was made
11 to the exclusion of the Union." *El Paso Electric Co.*, 335 NLRB No. 95 (2010). Importantly, any
12 discussions or actions by an employer within the direct dealing context must be "**made with the**
13 **intent to, or for the purpose of, circumventing bargaining with the union.**" *Renal Care of*
14 *Buffalo, Inc. & Commc'n Workers of Am., Local 1168*, 347 NLRB 1284, 1292 (2006) ("[I]t is not
15 enough that the employer communicates with its employees about wages, hours, or working
16 conditions; such communication must be made with the intent to, or for the purpose of,
17 circumventing bargaining with the union.") (emphasis added) (citing *Emhart Industries*, 297 NLRB
18 215, 225 (1987)).

19 Within the direct dealing context, the Board searches for evidence of intent by the employer
20 to undermine the authority and status of the union as the employees' bargaining representative. For
21 example, attempts to deal directly with employees to undercut a union have been found to occur
22 where an employer offers an employee a wage increase to disavow the union,¹⁷ makes speeches
23 demonstrating union animus¹⁸ or creates "process enhancement teams."¹⁹

24 Board authority highlights that there must be an effort on the part of the employer to "curtail
25 the statutory rights of the Union." *Flambeau Plastics*, 151 NLRB 591 (1965). *See Fairhaven*

26 ¹⁷ *Flowers Baking Co.*, 161 NLRB 1429 (1966).

27 ¹⁸ *K-D Mfg. Co.*, 169 NLRB 57 (1968).

28 ¹⁹ *Summa Health Sys.*, 330 NLRB 1379 (2000).

1 *Properties*, 314 NLRB 763 (1994)(employer violated Section 8(a)(5) when it asked employees to
2 sign a petition to oust the union and promised wage increases if the employees did so; Board reached
3 this conclusion because the employer's action was *intended to undermine* the union as the
4 employees' exclusive bargaining representative); *Heck's, Inc*, 293 NLRB 1111 (1989)(an employer
5 violated its duty to bargain where it unilaterally issued a handbook encouraging employees who feel
6 they have legitimate grievances to report them directly to management, *where no provision was*
7 *made to include the union in the procedure*).

8 Where the employer's communication with employees has little or no effect on the authority
9 of the bargaining agent, there is no violation. For example, where an employer made a direct
10 announcement to employees inviting them to bid for a job vacancy, the Board found no violation,
11 though the matter was subject to active discussion between the employer and the union. *Union Elec.*
12 *Co.*, 196 NLRB 830 (1972).

13 **1. YP Permitted Two Clerical Assistant Employees to Work Remotely on a**
14 **Temporary Basis Consistent With the Union's Proposals During**
15 **Bargaining.**

16 The Board's allegation that the Employer dealt directly with its clerical employees when it
17 permitted Carol Peterson and Jessica Durante to work remotely following the closure of the Redding
18 and Concord offices is without merit. As shown above, in order to find an actionable direct dealing
19 allegation, the General Counsel must demonstrate that the Employer engaged in action which
20 evidences an intent on the part of the employer to bypass or avoid its bargaining obligation with the
21 Union. *Emhart Industries*, 297 NLRB 215, 225 (1987). The General Counsel has failed to do so
22 here.

23 Crucially, the Union itself repeatedly proposed that clerical assistants be permitted to work
24 virtually following the Northern California office closures. (G.C. Exh. 6, G.C. Exh. 13). The Union
25 renewed its proposal three times during the parties' bargaining over the closure of the Employer's
26 physical facilities. (Tr. 150:5-20; 150:23-25; 151:1-4). It is undisputed that the parties negotiated
27 regarding virtualization, and that the Union was fully supportive of having *all* clericals work
28

1 virtually. (Tr. 152:9–21). The Employer had no reason to believe that the Union would object to
2 having some number less than all clericals work remotely.

3 As Ms. Peterson’s and Ms. Durante’s working from home was consistent with proposals the
4 Union made during bargaining, YP’s actions posed no threat to the Union’s position as the exclusive
5 bargaining representative. The General Counsel has failed to produce any evidence of the
6 Employer’s intent to undermine the Union. In fact, the absence of any independent 8(a)(1) or 8(a)(3)
7 activity or bad faith bargaining, and the 50-year relationship between the Employer and the Union,
8 support the Employer’s good faith.

9 **2. YP Did Not Intend to Bypass the Union through its July 15, 2016**
10 **Communication to Sales Representatives Regarding ypDirect Rates.**
11 **Rather, it Involved the Union in its Efforts to Clarify Any**
12 **Miscommunication.**

13 General Counsel’s claim that the Employer dealt directly with its sales representative
14 employees regarding ypDirect is likewise without merit. As discussed above, to establish a direct
15 dealing claim, the General Counsel must be able to point to some effort by the employer to “curtail
16 the statutory rights of the Union.” *Flambeau Plastics*, 151 NLRB 591 (1965); *see Boehringer*
17 *Ingleheim VetMedica, Inc.*, 350 NLRB 678 (2007)(Board held that the employer’s action did not
18 constitute direct dealing where employer presented locked-out employees with a no-strike form,
19 which the union had already rejected, advised them they would have to sign the form before
20 returning to work, and told them to seek advice from the union before signing, because employer did
21 not *seek* to bypass the union); *Leland Stanford Univ. & Stanford Univ. Hosp.*, 240 NLRB 1138
22 (1979)(employer that distributed opinion survey among unionized employees did not violate Act;
23 Board based its decision in large measure on issuance of memorandum to employees shortly after
24 circulation of survey disclaiming any intention to deal directly with employees). Further, where there
25 is confusion about whether a unilateral action was actually taken, and where the unilateral action
26 was, in fact never implemented, there is no injury to the collective bargaining process. *Champion*
27 *Parts Rebuilders, Northeast Div. v. NLRB*, 717 F.2d 845 (3d Cir. 1983)(an isolated departure from
28 an established company policy does not constitute a unilateral change if the policy itself does not
change.)

1 The General Counsel can point to no intent on the part of YP to undermine the Union. As
2 discussed above, the July 15, 2016 correspondence and accompanying exception agreement were
3 sent by the Employer's Sales department without any input or knowledge on the part of YP's Human
4 Resources or Labor Relations departments. Despite this fact, the July 15 presentation made note that
5 there "is no CBA agreement in place on the ypDirect alternate comp plan" and that a sales
6 representative would need to "gain approvals" from the Union to sell the product. (Jt. Exh. 2, pg. 5).
7 Further, the accompanying exception agreement provided a signature line for a Union representative.
8 (Jt. Exh. 2, pg. 6). While it may have been an inartful attempt to clarify that Union input was
9 required, the July 15 communication demonstrates the Employer's intent to affirm the Union's status
10 as the employees' exclusive bargaining representative.

11 As soon as the Labor Relations and Human Resources team learned of the July 15
12 communication, Mr. Halpern assured the Union during bargaining that the Employer would work
13 immediately to "fix" the communication. The Employer thereafter sent an email to its sales
14 representatives on July 20, 2016 affirming that "no changes to [employee] compensation may be
15 made without union approval and signoff" and that the "Company cannot and will not deal directly
16 with our bargained employees regarding compensation and other terms of employment." (Jt. Exh. 3).
17 Moreover, on August 4, 2016, following additional collective bargaining sessions with the Union in
18 late July and early August 2016, the Employer informed the Union and the sales representatives that
19 it would temporarily suspend sales of the ypDirect product so as to allow the parties to bargain
20 collectively regarding commission rates relating to the ypDirect product. (Jt. Exh. 4).

21 The Employer's July 15, 2016 communication regarding ypDirect and its accompanying
22 commission rate was imperfect and perhaps confusing. Nevertheless, the Employer's July 20 and
23 August 4 communications demonstrate a clear attempt by YP to include the Union and affirm the
24 Union's role as the sales representatives' exclusive bargaining representative. (Jt. Exhs. 2-4). *See*
25 *Champion Parts Rebuilders, Northeast Div.*, 717 F.2d at 852 (where there is confusion about
26 whether a unilateral action was actually taken, and where the policy at issue remained unchanged,
27 the Board concluded there was no violation of the Act.) Further, YP never implemented the lower
28 commission rates as proposed in the exception agreements. (Tr. 283:8-14). At every turn, the

1 Employer confirmed the Union's role and made no challenge to the Union's representational status.
2 The General Counsel's direct dealing allegations must, therefore, fail.

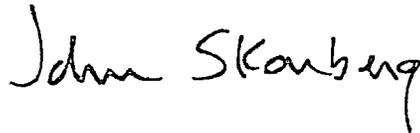
3 **C. The General Counsel Provided No Evidence to Support His Unilateral Action**
4 **Allegation.**

5 The General Counsel claims that the Employer took unlawful unilateral action when it
6 "implemented new sales commission rates for selling the ypDirect product." (Amendment to the
7 Amended Complaint ¶ 10(b)). Despite the assertion in the Complaint, the General Counsel produced
8 no evidence that a new commission rate was implemented. The Employer testified that no new
9 commission rate was implemented and that testimony is unrebutted. (Tr. 283:8-14).

10 **IV. CONCLUSION**

11 For the reasons set forth above, the Employer respectfully requests that the charges be
12 dismissed in their entirety.

13 DATED: May 24, 2017

14 

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16 _____
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PROOF OF SERVICE BY MAIL

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 333 Bush Street, 34th Floor, San Francisco, California 94104. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On May 24, 2017, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document:

POST-HEARING BRIEF

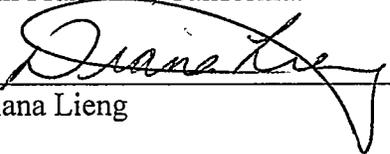
in sealed envelopes, postage fully paid, addressed as follows:

Harry M. Esquivel International Brotherhood of Electrical Workers, Local 1269 870 Market St., Ste. 479 San Francisco, CA 94102-3013	Karen Gowdy International Brotherhood of Electrical Workers, Local 1269 870 Market St., Ste. 479 San Francisco, CA 94102-3013
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Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 24, 2017 at San Francisco, California.


Diana Lieng