United States Postal Service *and* Branch 256, National Association of Letter Carriers (NALC), AFL–CIO. Cases 07–CA–145159 and 07–CA–159684

June 12, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On December 2, 2016, Administrative Law Judge Christine E. Dibble issued the attached decision. The Respondent filed exceptions and a supporting brief, to which the General Counsel filed an answering brief and the Respondent filed a reply brief. The General Counsel filed cross-exceptions and a supporting brief, to which the Respondent filed an answering brief and the General Counsel filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions,[1] cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, in the Flint installation and the facilities it encompasses and the Detroit District, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with Branch 256, National Association of Letter Carriers (NALC), AFL–CIO (the Union) by failing and refusing to furnish and/or by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its function as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent it has not already done so, furnish to the Union in a timely manner the information requested by the Union on October 22, 2014, and July 25, 2015.

(b) Within 14 days after service by the Region, post at its facilities within the Detroit District, including the Flint installation and the facilities it encompasses, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 12, 2017

[1] There are no exceptions to the judge's finding that the Respondent unlawfully delayed in responding to the Union's request for the names and work locations of light-duty status employees.

[2] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) as alleged, we do not rely on the judge's citations to *Alcan Rolled Products*, 358 NLRB 37 (2012), and *Postal Service*, 359 NLRB 1052 (2013), decisions that issued at a time when the Board lacked a quorum. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014).

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by unreasonably delaying furnishing information about light-duty employees' work restrictions, we do not rely on the judge's suggestion that the Respondent "waived" its right to bargain over how to protect employees' confidential medical information. Instead, we find that the Respondent failed to adhere to the process for handling requests for employee medical information set forth in its negotiated agreement with the Union. See, e.g., *River Oak Center for Children*, 345 NLRB 1335, 1336 (2005), enfd. mem. 273 Fed.Appx. 677 (9th Cir. 2008).

[3] On exception, the General Counsel contends that the judge erred by declining to recommend a broad cease-and-desist order and by failing to extend the order to apply to "any other labor organization." Contrary to the General Counsel's contentions, we find that the judge's recommended remedial Order, including district-wide notice posting, is necessary and sufficient "'to dissipate fully the coercive effects of the unfair labor practices found.'" *Federated Logistics & Operations*, 340 NLRB 255, 256 (2003) (quoting *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995)), enfd. 400 F.3d 920 (D.C. Cir. 2005).

We shall modify the judge's recommended Order to conform to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

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

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing and/or by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information it requested on October 22, 2014, and July 25, 2015, to the extent we have not already provided it.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlrb.gov/case/07–CA–145159 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Jennifer Y. Brazeal, Esq., for the General Counsel.
Roderick D. Eves, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge.[1] This case was tried in Detroit, Michigan, on April 18 and 19, 2016.[2] Branch 25, National Association of Letter Carriers, AFL–CIO (Charging Union) filed charges in Cases 07–CA–145159 and 07–CA–159684 on January 26, 2015, and September 8, 2015, respectively. (GC Exhs. 1(a) to 1(aa).)[3] The General Counsel issued the complaint and notice of hearing for case 07–CA–145159 on May 20; and issued the complaint and notice of hearing for case 07–CA–159684 on December 31.[4] The United States Postal Service (Respondent) filed timely answers to both complaints denying all material allegations.

The consolidated complaint alleges that (1) from about October 22, 2014, to about November 14, 2014, Respondent unreasonably delayed in furnishing the Charging Union "with the following information for 'all Flint installation employees with light-duty status' including their: names, location, restrictions (written request to Postmaster), date restrictions began; and all information concerning reasonable accommodation hearings for each"; (2) from about October 22, 2014, to about February 11, Respondent unreasonably delayed in informing the Charging Union that the requested information, with respect to Joelle Hindbaugh does not exist; (3) from about October 22, 2014, to about February 20, Respondent unreasonable delayed in furnishing the Charging Union with the requested information as

[1] At the start of the trial, the counsel for the General Counsel made a motion to consolidate cases 07–CA–145159 and 07–CA–159684. Respondent supported the motion to consolidate. I granted the General Counsel's motion.

[2] All dates are in 2015, unless otherwise indicated.

[3] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "CU Exh." for Charging Union's exhibit; "ALJ Exh." for administrative law judge's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel's brief; "R. Br." for Respondent's brief; and "CP Br." for Charging Union's brief. My findings and conclusions are based on my review and consideration of the entire record.

[4] On May 26 and 28, the General Counsel issued errata to the complaints and notices of hearings to correct language in the prayer for relief. See GC Exhs. 1(f), 1(h). In addition, on October 19, the Charging Union filed the first amendment to Case 07–CA–159684. (GC Exh. 1(p).)

to light-duty employees other than Joelle Hindbaugh; (4) from about July 25 to about September 2, Respondent unreasonably delayed in furnishing the Charging Union with requested the test scores, seniority dates, and seniority numbers as described in paragraph 7 of complaint 07–CA–159684; and (5) since about July 25, Respondent has failed and refused to furnish the Charging Union with underlying documentation used to establish the modified/changed "seniority dates and ranks" as described in paragraph 7 of complaint 07–CA–159684.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent provides postal service for the United States and operates facilities throughout the nation, including the State of Michigan. Respondent admits and I find that Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, et seq. (PRA) gives the National Labor Relations Board (the Board/NLRB) jurisdiction over the Respondent in this matter.

At all material times the Charging Union and National Association of Letter Carriers (NALC), AFL–CIO (National Union) have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview of Respondent's Operation

Respondent processes and delivers mail nationwide, and is organized into seven distinct Regions: Northeast, Eastern, Great Lakes, Capital Metro, Southern, Western, and Pacific. Each Region is divided into Districts; and the Districts consist of postal locations that are grouped into an installation. Installations are comprised of a number of postal facilities within a certain city. The Great Lakes Region, which is involved in this case, has seven Districts: Detroit, Lakeland, Greater Michigan, Greater Indiana, Gateway, Central Illinois, and Chicago. The District and postal facility at issue are: the Detroit District and the Flint installation. The Flint installation is comprised of several postal stations: Northeast Station (cities Flint and Burton); Southeast Station (cities Burton and Grand Blanc); Cody Station (Flint City); Northside Station (Flint City); Northwest Annex (Flushing City, Flint City, Mundy Township); Southwest Annex (Flint Township); and Main Office (downtown Flint). (Tr. 69–70.)

David Williams (Williams) is Respondent's chief operating officer and executive vice president. Great Lakes area manager, Jacqueline Krage Strako (Strako) reports directly to Williams.[5] At all material times, Lee Thompson (Thompson) was the Detroit district manager. Since August 2013, Andrea Porter has been the Detroit request for information (RFI) coordinator. Wanda Rodgers (Rodgers) has held the position of human resource services (HRS) local services for the Detroit District.

During the relevant period, Ron Hippensteel (Hippensteel) was the postmaster and installation head of the Flint installation. Since January 2000, Cheryl Trenkle (Trenkle) has been the "confidential secretary" to the postmaster. During all pertinent times, the following individuals held positions of: Michael Steiner (Steiner) officer-in-charge, Flint/station manager Northwest Annex; Shari Demo (Demo) manager of customer services; Darryl Kittell (Kittell) supervisor of customer services; Risson Ingalls (Ingalls) station manager/manager of customer service, Flint Northwest;[6] and Joelle Hindbaugh (Hindbaugh) acting supervisor, Flint.[7]

The following constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time city letter carriers employed by Respondent at various facilities throughout the United States, but excluding professional employees, employees engaged in personnel work in other than a purely nonconfidential clerical capacity, postal inspection service employees, employees in the supplemental work force, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, managerial employees, supervisory personnel, and security guards as defined in Public Law 9-375, 1201(2).

(GC Exhs. 1(d), 1(s).) During the period at issue, the Charging Union represented between 250–300 employees at Flint and the cities attached to the Flint installation. For approximately 9 years, Paul Gillie (Gillie) has been the president for Branch 256 and the union steward, which has been designated by the national union (NALC) to represent those employees. Patricia Skinner (Skinner) is a member of Branch 256 and served as its union steward in 2014 and 2015.

B. Collective-Bargaining Agreement and Requests for Information

NALC entered into a nationwide collective-bargaining agreement (CBA) with Respondent that was effective from January 10, 2013, through May 20, 2016. Article 31 of the CBA governs requests for information (RFI). It reads in relevant part:

> Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations. Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

[5] I have taken judicial notice of Respondent's administrative structure as set forth on its website. See http://about.usps.com/who-we-are/leadership/hq-org-photos?v=51416. F.R.E. 201(b); *Doron Precision Systems, Inc. v. FAAC, Inc*., 423 F.Supp. 2d 173, 179 fn.8 (S.D.N.Y. 2006) ("a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute and it's capable of accurate and ready determination.")

[6] Ingalls, also known as "Sean," officially assumed the position of station manager/manager of customer service Flint Northwest on February 7, 2015. Beginning in November 2014, he had responsibilities for and split his time working out of the Flint Northwest and Waterford postal facilities. In June 2016, Ingalls' responsibility for and work in the Waterford postal facility ended.

[7] Respondent also refers to its acting supervisors as "204-B" supervisors.

(Jt. Exh. 1, p. 108.) The NALC and Respondent are also parties to the Joint Contract Administration Manual (JCAM). It also addresses the parties' rights and obligations regarding union RFIs. It reads in relevant part:

> To obtain employer information the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract. The union must have a reason for seeking the information—it cannot conduct a "fishing expedition" into Postal Service records.
>
> Settlements and arbitration awards have addressed the union's entitlement to information in certain specific areas. For example, the union has a right to any and all information which the employer has relied upon to support its position in a grievance (Step 4, HIC-3U-C 6106, November 5, 1982, M-00316). Note that the union also has an obligation to provide the Postal Service with information it relies upon in a grievance (Article 15). The union is also entitled to medical records necessary to investigate or process a grievance, even without an employee's authorization, as provided for in Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management* and by Articles 17 and 31 of the National Agreement. If requests for copies are part of the information request, then USPS must provide the copies (Step 4, H7N-5K-C 23406, May 21, 1992, M-01094). A national prearbitration settlement established that if the union provides the Postal Service with a list of officers and stewards, the Postal Service must indicate which (if any) applied for a supervisory position within the previous two years (National Prearbitration Settlement, H4C-3W-C 27068, February 13, 1990, M-01150). When the union is provided with information, for example medical records, it is subject to the same rules of confidentiality as the Postal Service.

(Jt. Ehx. 2, p. 31–2, 31–3). Respondent's Detroit District maintains the Detroit RFI office, which is tasked with overseeing the flow of RFIs. As the Detroit RFI coordinator, Porter monitors, log-in, and processes RFIs. The RFIs are sent to her office over a dedicated facsimile line; and once she receives the RFI, Porter date stamps the document and forwards it to the local management official who is responsible for providing the requested information.

C. Union's RFI: October 22, 2014

Skinner represented an employee, Dave Jones (Jones), who was having health issues and required light duty.[8] As a result of his request to Respondent for light duty, Jones was sent for a reasonable accommodation hearing.[9] Consequently, on October 22, 2014, Skinner hand-delivered a RFI form to Kittel, requesting:

> All Flint installation employees with light duty statis (sic)
>
> 1- Names
> 2 Location
> 3 Restrictions (written request to Postmaster)
> 4 Date restrictions began
> 5 all information concerning reasonable accommodation hearing for each

(GC Exh. 4.) The RFI form was addressed to Hippensteel, Steiner, and Kittel. Kittel signed for receipt of the RFI on October 22, 2014. Although a piece of the requested information was located at the Northwest Flint facility, the bulk of the requested information was scattered among various postal facilities. Accordingly, in an attempt to procure the information, Kittel contacted other local post offices but only one of the stations' postmasters returned his call. The postmaster declined to provide Kittel with the requested information. Consequently, he forwarded the RFI form to Trenkle[10] and wrote on it,

> Cheryl,
> Do you have any of this information on hand? Tried offices w/little or no luck
> Thanks D

(GC Exh. 4.) About a week after she delivered the RFI, Skinner approached Kittel for an update on the status of the request. Kittel informed her of his unsuccessful efforts to procure the information from other postmasters and showed her the note that he had written to Trenkle requesting her assistance. (Id.)

Upon receipt of the RFI with Kittell's handwritten note, Trenkle obtained the information in response to items #1 and #2 of the RFI. However, she did not provide information on items #3 through #5 of the RFI because the "labor relations office" informed her that the union would have to get medical releases from the affected employees due to the confidential nature of the information. By letter dated November 14, 2014, Demo, on behalf of Hippensteel, addressed a letter to Skinner, responding to the union's October 22, 2014 RFI. In the letter Demo explained the information for items #1 and #2 of the RFI. However, she did not provide items #3 through #5 of the RFI. Demo wrote,

> In order to release this confidential information contained within an employe medical documentation, you will need to have each employee sign the attached medical release and return to me.

(GC Exh. 5.) Kittel received Demo's November 14, 2014 letter as an attachment in an email chain that included him. At some

[8] Light duty is a term used by Respondent to describe modified job duties provided to employees who are experiencing health issues that prevent them from performing their normal duties without assistance.

[9] Respondent reasonable accommodation hearing consists of a panel of management officials who, through questioning of employees and review of documents, determine whether an employee meets the eligibility requirements for a job modification during the pendency of their illness or injury.

[10] Trenkle testified that on November 6, 2014, Kittell forwarded her the RFI. However, Skinner's testimony is that Kittell told her that he had sent the RFI to Trenkle late October 2014 and showed her a copy of his note to Trenkle. (GC Exh. 4.) Kittell did not testify to the date he forwarded the RFI to Trenkle. Regardless, the evidence is clear that Trenkle received the RFI by early November because she was able to obtain the information in response to items 1 and 2 of the RFI; and draft the November 14, 2014 letter for Demo to send to Skinner. (GC Exh. 5.)

point, Kittel hand delivered the November 14, 2014 letter to Skinner. She complained to him that the union was entitled to the information without being required to procure the medical releases. Kittel responded that "there's nothing I can do about it. You would have to file another grievance because there's nothing I can do at my level."[11] (Tr. 62.)

On November 23, 2014, Skinner filed a grievance because of Respondent's failure to provide the information requested in the October 22, 2014 RFI at items #3 through #5. (GC Exh. 6.) On January 5, Respondent's Dispute Resolution Team (DRT)[12] issued a step B decision upholding the grievance and instructing Respondent that "[m]anagement shall immediately supply the requested information." (GC Exh. 7.)

Trenkle received the step B decision on January 8, and forwarded a copy to Ingalls via interoffice mail. Ingalls testified that he first saw the step B decision on about January 30. (Tr. 203.) Trenkle also provided a copy of the grievance file and step B decision to the "postmaster for review." (Tr. 161.) It should also be noted that on January 30, Gillie, because of Respondent's failure to provide all the documents sought in the October 22, 2014 information request, submitted another RFI repeating the request for the same documents sought in the October 22, 2014 RFI. He hand delivered that RFI to Supervisor Dennis Delmage.

Within a "couple of days" of receiving the step B decision, Ingalls asked for Trenkle's assistance in gathering documents responsive to items #3 and #4 of the October 22 RFI. By February 5, she had gathered the remaining information responsive to the October 22, 2014 RFI, and provided it to Ingalls for his review and possible redaction.

On about February 4, Trenkle also submitted a request, by facsimilie, to the Detroit District RFI Office for the reasonable accommodation information on Joelle Hindbaugh at item #5 of the October 22, 2014 RFI. She documented for the Detroit District RFI Office the unsuccessful efforts she had taken to date to acquire the information. On about February 10, Porter sent Trenkle an email stating that there was no information responsive to the October 22, 2014 RFI item #5 regarding Hindbaugh. Consequently, on February 11, Trenkle notified Gillie by email that there was no record of the DRAC[13] results for Hindbaugh. On or about February 20, Respondent provided to Gillie the information responsive to the October 22, 2014 RFI items #3 through #5. Gillie forwarded the information to Skinner.

[11] Kittell initially testified that he had not discussed the November 14, 2014 letter with Skinner. However, he immediately contradicted himself by admitting to telling her, in connection with the letter, that Skinner would have to file a grievance to get the requested information because he was unable to assist her at his level. Also, Skinner and Kittell use slightly different wording to describe Kittell's response to her complaint about management's November 14, 2014 letter. I find that the dissimilarity is insignificant and does not require me to resolve it in order to rule on the merits of the cases.

[12] The Dispute Resolution Team is comprised of labor and management members who work together to adjudicate grievances.

[13] I could find no indication in the record that the term "DRAC" was defined by either party.

D. Union's RFI: July 25, 2015

At some point, the Charging Union received seniority lists from Respondent which caused Gillie to question their accuracy. Consequently, on May 27, Gillie submitted a RFI to Kittel asking for the city carrier assistant (CCA) test scores and exams for 10 employees, the employees' official pay records for two pay periods, and PS Form 50s for calendar year 2015 for the same employees.[14] On May 28, Kittel forwarded the RFI to Trenkle seeking her assistance. By email dated May 29, Trenkle contacted Respondent's Law Department—NLRB Unit for guidance on whether "postal exam scores" could be provided to the union in response its RFI. (R. Exh. 4.) By email dated May 29, Tonya Kennish (Kennish), from the law department, informed her that certain protocols must be followed when the union is seeking exam scores. The protocol is listed as follows: (1) ask the union if it is willing to obtain the employees' consent; (2) if the union is unwilling to obtain employees' consent, offer to make the exam scores available for review but not copy; and (3) if the union insists on obtaining the test scores, request that the union sign a nondisclosure agreement (NDA) restricting the disclosure of the scores only to those union officials who are investigating or processing the grievance.

By letter dated May 29, Porter responded to Gillie about the May 27 RFI by attaching "the requested PS Form 50s along with a request for an [e]xtension." (GC Exh. 13.) In response to the request for the test scores, Porter wrote

> . . . the Postal Service requests that the Union obtain written consent from each employee whose test score they are requesting, prior to the information being released. If you believe that this request imposes an undue burden on the union, I invite you to explain why it is overly burdensome and to bargain with the Postal Service over some alternative safeguard to its confidentiality interests.

(GC Exh. 13.) On receipt of Porter's response, the Charging Union did not seek releases from the affected employees. However, Gillie continued to agitate for the information; and on about July 8, he emailed Hippensteel for an update on the status of the May 27 RFI noting in part,

> The attached information request is six weeks old. The USPS requested an extension to July 9, 2015, to which I did not object.
>
> At this time I am requesting that the USPS exercise Option #2 and Option #3, detailed below. I noted the union is not unwilling to obtain releases but that is nnecessary and I do not have immediate access to the personnel to obtain said release(s). Also, should any employee decline to sign a release, it would not

(R. Exh. 4.) Hippensteel forwarded the email to Trenkle who arranged for Gillie to come to the office to review the employee test scores and seniority information. On July 10,[15] Gillie came

[14] The May 27 RFI is not the subject of this complaint but rather is included as background information.

[15] Gillie acknowledged that at some point in July he partially completed the PS Form 6105, and informed management that he would

to the Flint main post office to review the information, along with Hippensteel and Trenkle. He had been provided a list of employees which included their seniority dates. Gillie used this list to compare it with the employees' applications and test scores he was given for review. During the course of this review, Gillie voiced a concern that the employees were inaccurately ranked. Consequently, he made notations on the roster to reflect his assessment of the correct ranking of the employees based on their test scores. (GC Exh. 14.) Hippensteel told him that his corrections would be sent to his "district counterparts" for review. It took Gillie approximately an hour to look at the named employees' applications[16] which included their test scores. (R. Exh. 6.)[17]

By letter dated July 23, Porter provided Gillie with a routing slip containing a list of employees with modified seniority dates. It read in part,

> Here are the corrected seniority dates and rankings in score order however due to HRSSC processing days webcoins will not reflect these changes until 7/30/2015.

(GC Exh. 15.) Despite Respondent's corrections to the seniority list, Gillie continued to doubt the accuracy of the employee rankings because 8 of the employees on the July 10 list were not on the Respondent's July 23 "corrected" list. Consequently, on July 27, Gillie hand delivered a RFI to Kittel dated July 25, seeking: (1) any and all information used to determine the 'Sen Date Craft' and 'Sen #' for all employees with a 'Sen Date Craft' for 2015 listed on Exhibit 1, attached; and (2) any and all information used to establish the modified/changed 'seniority dates and ranks' for the employees listed on Exhibit 2, attached. (GC Exh. 17.) Gillie made the request because he wanted an explanation for the discrepancies between the July 10 and July 23 seniority lists and the information Respondent relied on in creating the lists. Among other concerns, Gillie had also expressed skepticism that employee Richard Henry's (Henry) veterans' preference points had been properly scored. Kittel informed Gillie that he would forward the RFI to the appropriate postal officials.

By email dated August 14, Trenkle forwarded Gillie an updated seniority list from Respondent's local services. She also relayed to him the comments made by Rogers in local services on the possible reasons for Henry's score. (GC Exh. 18.) Trenkle emailed Gillie,

> I just talked to Wanda Rogers in Local Services: With regard to Richard Henry . . . she said he could have applied for any number of another positions around that time during the application process and opted to re-take the test and gotten a higher score which wipes out the lower score."

(GC Exh. 18.) Gillie responded in part,

> I submitted a request to D. Kittell a couple weeks ago, requesting information used to establish the (then) updated relative standing list. The records are at my office. Since I am working for National today, they are not within my reach at this time.

(Id.) Trenkle informed him that she had forwarded his request to the Detroit District ROI because it was not available locally. By letter dated August 21, Respondent asked the Charging Union for an extension of time to respond to the July 25, RFI.[18] There is no evidence that the Charging Union responded to the request.

By letter dated September 2, Porter informed Gillie that "[p]er Exhibit 1—The wrong column was entered on WEBCOINS report (SEN DATE CRAFT) see corrected list for item #1; and [p]er Exhibit 2—Information was established to make corrections by verifying the Hiring register." (GC Exh. 20) Consequently, Gillie responded to Porter that he continued to have question about the rankings of the employees. Gillie testified that he felt the response was only partially responsive to the July 25 RFI because: (1) there was no explanation about how Respondent compiled the July 10 and 23 lists; (2) Respondent failed to supply supporting documentation for employees rankings on the July 10 and 23 seniority lists; and (3) the seniority list on September 2 continued to reflect an inaccurate ranking of the employees. (Tr. 111–112.)

Based on his concerns, on September 4, Gillie sent Porter a letter detailing his issues with the rankings of the employees. In the letter he noted that regarding item #1 of the July 25 RFI, the seniority lists continued to reflect inaccurate rankings of the employees; and with respect to item #2 of the July 25, RFI Respondent had not provided the underlying documentation that it used to "establish the modified/changed 'seniority dates and ranks' for the employees listed on Exhibit 2" of the RFI. (GC Exh. 21.) Porter followed-up with a clarification to her September 2 letter to Gillie. By letter dated September 29, Porter informed Gillie that corrections were made to the rankings based on a review of the employees' PS Form 61, test

fully complete it after he received the documents in response to the RFI. (Tr. 120–121.)

[16] Gillie denied that he was able to review the employees' entire applications. He claimed that he saw only the cover page to the employees' employment packet with their exam score. (Tr. 122.) Respondent, however, rebuts his testimony on this point. Respondent noted that the employee applications included the employees' test scores and their claim of veterans' preference. According to Trenkle, she placed the applications for all of the requested employees in front of Gillie for him to review. She showed him where to locate the test scores within the application but did not in any way restrict or limit Gillie's ability to review the entire application packets. I credit Trenkle's testimony on this point and find that Gillie did or was able to review the entire application packet for each employee. In fact, Gillie testified that Hippensteel informed him he could come to the Fling main post office to review the "employees' application records" and when he arrived, he reviewed the applications with Trenkle. Gillie's later retraction on this point does not ring true.

[17] Respondent made a motion to have GC Exh. 22 placed under seal because p. 2 of the exhibit contains "confidential information in the nature of test scores that are indicative of employees' basic competency." (Respondent's Motion to Place Under Seal General Counsel's Exhibit 22) The General Counsel did not file a response. Based on my review of Respondent's motion, Board decisions, and weighing the parties' competing interest, I will grant, in part, Respondent's motion. I, therefore, order that p. 2 of GC Exh. 22 be placed under seal.

[18] The parties agreed that Respondent's request for extension of time to respond to the July 25, RFI was incorrectly dated as "August 14, 2015," on the extension of time form at GC Exh. 19.

scores, and "Hiring Lists." (R. Exh. 13.) However, Porter did not include copies of the PS Form 61 and test scores. According to Porter, the test scores would be released once he signed an attached Form 6105 or a Non-Disclosure Agreement. (Id.)

Respondent scheduled a meeting with Gillie to be held on October 13, for him to sign the PS Form 6105 and provide him with the test scores. On October 13, Gillie met with Detroit District Human Resources Manager Lee Ward (Ward), Rogers, and Porter. During the meeting Gillie was given a PS Form 6105 which he signed. He then received employee test scores and a chart demonstrating each employee's seniority date and rank. (GC Exh. 22.) Gillie continued to be dissatisfied with the information provided because: (1) the test scores Respondent provided in response to the May 27 RFI did not include several of the employees listed in item 2 of the July 25 RFI; and although he received information responsive to item 1 of the July 25 RFI, Respondent still did not provide him with the underlying documentation it used to come to the conclusion that the rankings shown to him at the October 13 were correct. Gillie also still had concerns about the ranking of Henry, which he discussed at length with management in the meeting. When discussing Henry's score, Rogers went to the computer in the room and accessed his records. She noted to Gillie that Henry's score was actually higher than that shown on the document she had given to Gillie. By the end of the meeting, Gillie agreed with Porter and Roger that, with the exception of Henry, the rankings were correct.

In summary, the Charging Union agrees that it ultimately received the information requested for item #1 of the July 25 RFI. However, it continues to insist that Respondent has failed and refused to provide the information requested in item #2 of the July 25 RFI.

III. DISCUSSION AND ANALYSIS

A. Legal Standards

Section 8(a) (5) of the Act mandates that an employer must provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co*. 351 U.S. 149, 153 (1956); *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979). ". . . [T]he duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." *NLRB v. Acme Industrial Co*., 385 U.S. 432, 436 (1967). Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co*., 344 NLRB 231, 235 (2005). If the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *The Earthgrains Co.*, 349 NLRB 389 (2007).

The standard for establishing relevancy is the liberal, "discovery-type standard." *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities. In *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as follows:

> [T]he Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp*., 274 NLRB 504 (1985); *TRW*, *Inc*., 202 NLRB 729, 731.

The requested information does not have to be dispositive of the issue for which it is sought, but only has to have some relation to it. *Pennsylvania Power & Light Co*., 301 NLRB 1104, 1104–1105 (1991). The Board has also held that a union may make a request for information in writing or orally. Further, the Board has found that a delay is unreasonable when the information requested is easily and readily accessible from an employer's files. *Bundy Corp*., 292 NLRB 671, 672 (1989).

B. October 22, RFI: Respondent's unreasonable delay

I find, and Respondent admits, that all of the information sought by the Charging Union in the October 22, RFI is necessary for and relevant to the Charging Union's performance of its duties as the designated servicing representative of the exclusive collective-bargaining representative of the unit. See *United Graphics, Inc.*, 281 NLRB 463, 465 (1986) (the Board held that information presumptively relevant to the union's role as bargaining agent must be provided to the union as it "relates directly to the policing of contract terms.").

1. Unreasonable delay until November 14, 2014, in providing information

As part of its October 22 RFI, the Charging Union requested the names and work locations of employees on light duty status. Respondent did not provide this information until November 14, 2014. The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act because the Charging Union's requests for information were relevant and necessary to the performance of its duties as the designated servicing representative of the exclusive collective-bargaining representative of the unit; and Respondent's delay and, or refusal in providing the information was unreasonable. Respondent argues that the delay was reasonable because (1) Kittel did not have readily available access to the information so he attempted to get it from other installation but they refused to cooperate; and (2) Kittel enlisted the assistance of Trenkle who obtained the information within a week or two of receiving the request. Consequently, Respondent contends that under the "particular circumstances" it made a diligent effort to provide the information "with reasonable promptness." (R. Br. 8.)

I find that Respondent's argument is without merit. The Board has held that in assessing the promptness of a response to an information request, the totality of the pertinent circum-

stances must be considered.[19] "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."[20] It is clear that Respondent's action, given the totality of the circumstances, does not meet the definition of "reasonable promptness" as set forth in *West Penn Power Co*. Neither Kittel, nor Trenkle or any other management official testified that obtaining the names and work locations of the affected employees involved complex or voluminous information. Kittel admitted that he had some of the names and work locations of those individuals who worked at his location, Flint Northwest facility. Presumably, the managers Kittel called to obtain the remaining information, likewise, had easy access to the names and work locations of light duty employees at their facilities but refused to cooperate. Another factor to consider in assessing the promptness of the response is the ease with which Trenkle was able to obtain the information. Although Respondent described the actions taken to provide the Charging Union with the names and work locations of employees on light duty, Respondent failed to explain the why it took almost a month to obtain this simple and limited information.

Accordingly, I find that Respondent's delay until November 14, 2014, to respond to items #1 and #2 of the Charging Union's information request was unreasonable and therefore violated Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

2. Respondent unlawfully delayed until February 11, in informing Charging Union about the status of employee Joelle Hindbaugh and unlawfully delayed until February 20 in furnishing information about the remaining light duty employees

In its November 14, 2014 response to the October 22 RFI, Respondent refused to provide the information at items #3 through #5 of the request until the Charging Union secured signed medical releases from each affected employee. As noted earlier in this decision, the Charging Union ultimately filed a grievance to receive the remaining information; and on January 5, the DRT upheld the grievance by requiring Respondent to "immediately supply the requested information." (GC Exh. 7.) Respondent, however, did not inform the Charging Union until February 11, that there was no record of DRAC results for Hindbaugh. The information related to the remaining employees was not given to the Charging Union until February 20.

In its defense, Respondent argues that the delay was necessary because (1) the union failed to obtain releases for the nondisclosed confidential information, nor attempted to bargain with Respondent over alternate means to obtain the information that would protect employees' confidentiality interests; (2) Respondent did not "clearly and unmistakably waive its right to bargain over how to protect confidential information that it discloses to the union"; and (3) Respondent provided the remaining information within a reasonable period of time after receiving the DRT Step B decision. I reject Respondent's arguments on all points.

It is well-settled law that the party asserting confidentiality has the burden of proof. *Postal Service*, 356 NLRB 483 (2011); *Detroit Newspaper Agency*, 317 NLRB 1071 (1995); *Northern Indiana Public Service Co*., 347 NLRB, 211 (2006). Even assuming that Respondent meets its burden, it cannot simply refuse to furnish the information, but rather must engage in accommodative bargaining with the Union to seek a resolution that meets the needs of both parties. In *Alcan Rolled Products*, supra at 15, the Board explained:

> Confidential information is limited to a few general categories that would reveal, contrary promises or reasonable expectations, highly personal information. *Detroit Newspaper Agency,* 317 NLRB 1071, 1073 (1995). Such confidential information may include "individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be a timely manner and seek an accommodation from the other party. Id. at 1072.

The disclosure of the information must be balanced against the confidentiality and privacy interests raised by Respondent. *Detroit Edison Co*., supra.

Respondent's insistence that the Charging Union get medical waivers prior to receiving the information about Hindbaugh and the remaining employees is inconsistent with its own actions. Respondent entered into the JCAM with the union which specifically notes the union "is also entitled to medical records necessary to investigate or process a grievance, even without an employee's authorization . . ." (Jt. Eh. 2, p. 31–3.) Moreover, in the step B decision, Respondent's DRT noted management failed to follow the appropriate protocols for determining whether the medical information was relevant and necessary to the union's request and had therefore waived its right to deny it on the basis of confidentiality. (GC Exh. 7.) Consequently, in the step B decision the DRT instructed Respondent to immediately provide the union with the requested information without the Charging Union first having to secure medical releases from the affected employees. Lastly, there is nothing in the record to explain the lengthy delay in Respondent informing the Charging Union that the requested information for Hindbaugh did not exist. A quick review of Hindbaugh's personnel file or other electronic employee records should have revealed this information.

Respondent also sets forth an unpersuasive argument for why it has not waived its right to require medical waivers before releasing the information. According to its reading of the JCAM preamble, article 2 of the CBA, the Rehabilitation Act of 1973 (Rehabilitation Act), and the Equal Employment Opportunity Commission's (EEOC) regulations and case law, Respondent contends that these sources support a finding that: (1) the JCAM statement does not constitute a "clear and unmistakable waiver" of Respondent's right under the Act to bargain with the union over ways to protect confidential information; (2) the article 2 of the CBA and the Rehabilitation Act specifically prohibit unlawful discrimination against handicapped employees; and (3) EEOC's regulations and case law deem medical records that contain diagnosis of a condition as confidential and sharing such medical records with a union steward without the employee's consent is a per se violation of the Rehabilitation Act. (R. Br. 10–11.) I find Respondent's arguments

[19] *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. in pertinent part 349 F.3d 233 (4th Cir. 2005).

[20] Id. (internal quotations and citations omitted).

without merit.

The Board requires a waiver of a party's statutory right to be clear and unmistakable. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Timken Roller Bearing Co.*, 138 NLRB 15, 16 (1962). "A clear and unmistakable waiver may be found in the express language and structure of the collective-bargaining agreement or by the course of conduct of the parties. The burden is on the party asserting waiver to establish that such a waiver was intended." *Leland Stanford Junior University*, supra. See also, *NLRB v. New York Telephone Co.*, 930 F.2d 1009 (2d Cir. 1991), enfg. 299 NLRB 44 (1990); *United Technologies Corp.*, supra. Respondent's conduct, as established by the evidence, shows that it waived its right to bargain with the union over methods of protecting its employees' confidential medical information in this particular case.

While the JCAM may not contain an explicit waiver of Respondent's right to bargain with the union over how to protect confidential information, the DRT sets forth the clear steps Respondent has established for management to take to protect this right and explicitly found in its step B decision that Respondent failed in its effort, and thus waived its right. Second, I am unclear what argument Respondent is attempting to make by noting that the CBA and the Rehabilitation Act prohibit discrimination against individuals with disabilities. Finally, Respondent cites *Lampkins v. United States Postal Service*[21] to support its final argument. However, the case is inapposite to the facts at issue. In *Lampkins v. Postal Service*, the union did not request the employee's medical records, but rather, the employer unilaterally decided to provide the union and a supervisor with the information while in a pre-disciplinary meeting with the employee. More importantly, EEOC cases have no precedential value in matters before the Board.

Even assuming Respondent had not waived its right to bargain with the Charging Union over this issue, Respondent has failed to show that it attempted to engage in accommodative bargaining. It is undisputed that Respondent's initial response to the Charging Union's information request was to send partial information with the excuse that the employees' privacy interest required the Charging Union to secure medical waivers before receiving the requested information. Shortly thereafter, the Charging Union filed a grievance and ultimately separate charges with the NLRB. During this interim period (the time between Respondent's refusal to fully provide the requested information and the Charging Union filing a grievance and charges with the NLRB), there is no evidence that Respondent made any attempts at engaging the Charging Union in accommodative bargaining.

Accordingly, I find that Respondent's delay until February 11, to respond to information pertaining to Hindbaugh and its delay until February 20 to respond to the remaining information were unreasonable and therefore violated Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

C. July 25, RFI: Respondent's unreasonable delay

I find, and Respondent admits, that the information sought by the Charging Union in the July 25, RFI is necessary for and relevant to the Charging Union's performance of its obligations as the designated servicing representative of the unit. Therefore, the remaining questions are: whether in balancing the interests of the employees' versus the Charging Union the Respondent unreasonably delayed in furnishing the requested information; and whether Respondent ultimately provided the Charging Union with all of the requested information.

1. Respondent unlawfully delayed from July 25 to September 2 in responding to item #1 of the RFI

The General Counsel argues that Respondent's response to item #1 of the July 25, RFI was "unclear and unresponsive"; and did not include a valid reason to justify its delay in providing the requested information. Respondent counters that, after some initial confusion, it ultimately provided the union with the correct requested information; and made a good faith effort to explain to the Charging Union how it arrived at its response. Moreover, Respondent asserts that Gillie was obligated to "ask to view potential sources that would resolve" any lingering confusion on his behalf about the information he was given. (R. Br. 13.)

In the July 25 RFI Gillie, on behalf of the Charging Union, sought: (1) any and all information used to determine the 'Sen Date Craft' and 'Sen #' for all employees with a 'Sen Date Craft' for 2015 listed on Exhibit 1, attached; and (2) any and all information used to establish the modified/changed 'seniority dates and ranks' for the employees listed on Exhibit 2, attached. (GC Exh. 17.) Gillie submitted the July 25, RFI because he doubted the accuracy of employee rankings on seniority lists that he had received a few months earlier. However, it was not until about August 14, 2015, when Gillie reminded Trenkle he had yet to receive a response to the July 25 RFI that Respondent acknowledged it. It was at this point that Trenkle forwarded the RFI to the Detroit District RFI office. Porter wrote to the Charging Union asking for an extension of time to respond to the RFI but the Charging Union did not reply to the request. Consequently, it was not until September 2 that Respondent provided Gillie with a response to item #1 of the RFI which included a purported "corrected" seniority list; and a reply to item 2 of the RFI that consisted of an explanation that the correction (to the seniority list) was made by verifying the "[h]iring register." (GC Exh. 20.)

I find that Respondent unlawfully delayed until September 2, its response to item #1 of the July 25 RFI. While Gillie admits that in September the Charging Union received an adequate response to item #1 of the July 25 RFI, it was not provided until about 6 weeks after the initial request. This delay is unreasonable because there is no evidence that the information was not readily available. Moreover, Respondent admits that the information was not overly complex; and noted that the only difference between the information ultimately given to the Charging Union; and "the information already provided to the union before the July 25, 2015 request for information is that Kaeja Breed's seniority date changed from 02/16/15 to 02/03/16, moving her ahead of Teearis Stratham in seniority rank for that date." (R. Br. 13.) The evidence simply shows that Respondent either misplaced or ignored the initial July 25 RFI; and after being reminded by Gillie that the request was

[21] EEOC Appeal No. 0720080017 (Dec. 8, 2009).

still pending, inputted wrong information causing an inaccurate seniority list to be generated and sent to the Charging Union. Incompetence on the part of Respondent is not a valid reason for a delay in responding to the Charging Union's relevant and necessary request for information.

Accordingly, I find that Respondent's delay until September 2, to respond to item #1 of the July 25 RFI was unreasonable and therefore violated Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

2. Since July 25, 2015, Respondent has failed to respond to item #2 of the RFI

The General Counsel alleges that Respondent never provided the information relevant to item #2 of the July 25 RFI; and Board law does not support Respondent's confidentiality defense. According to the General Counsel, Respondent provided some, but not all, of the underlying entrance exam scores for the employees on the July 23 seniority list; and "never provided an explanation as to how the July 23 list was modified from earlier lists.[22] The General Counsel argues that the facts in the case are "strikingly similar to *Postal Service*[23] in which the Board found that the entrance exam scores were not confidential, and should be provided to the union." (GC Br. 17.) Moreover, the General Counsel contends that even assuming the test scores were confidential, "Respondent waived its right to claim confidentiality when it provided employee scores to the Charging Party without the Charging Party having submitted releases." (GC Br. 18.)

Respondent counters that the employees' exam scores are confidential. Moreover, Respondent insists: (1) it provided the Charging Union with all of the "confidential" test scores; (2) a good-faith effort was made to explain to the Charging Union how it arrived at the seniority list given to the Charging Union; (3) Gillie was obligated to "ask to view potential sources that would resolve" any lingering confusion on his behalf about the information he received; and (4) any delay in receiving the test scores was due to the Charging Union's refusal to accept any of the 3 options offered to it for releasing the information while protecting the employees' privacy interests. Respondent, like the General Counsel, cites *Postal Service* to support its argument that the Charging Union was not entitled to unfettered access to the employees' test scores.

The evidence established that on May 29, Respondent asked the Charging Union to get the consent of the employees at issue to release their test scores. Gillie, on behalf of the Charging Union, did not seek releases from the employees. Instead, on July 8, Gillie emailed Hippensteel that he felt it was unnecessary for the union to obtain the releases, and requested that Respondent exercise "[o]ption #2 and [o]ption #3" of the Respondent's protocol for seeking exam scores. (R. Exh. 6.) As noted earlier in this decision, option #2 offered to make the exam scores available to the Charging Union for review but not copy; and option #3 requested that if the union insisted on obtaining the test scores without employee releases, it sign a NDA restricting the disclosure of the test scores only to those union officials who are investigating or processing the grievance.

Respondent rejects the General Counsel's contention that it did not provide the Charging Union with the underlying information it used to create the seniority list given to Gillie on about September 2. Respondent notes that the information Gille was provided before July 25 RFI, with one exception, never changed. This, however, is irrelevant because the Charging Union was seeking all of the information Respondent used to compile the final seniority list it gave to Gillie. I also find that there is no evidence that Respondent ever provided Gillie with the underlying documentation used to rank the employees on the July 23 list. Although Porter's letter to Gillie explains what was used to verify the accuracy of the seniority list, Gillie was never provided with the actual documents that Respondent used to accomplish it. Respondent argues that Gillie was obligated to "ask to view potential sources that would resolve" any lingering confusion on his behalf about the provided information. I, however, reject Respondent's argument. Respondent cites no Board or case law to support its argument of this point.

Respondent also insists that any delay in providing the test scores was due to the Charging Union's refusal to accept any of the options presented to it for receiving the confidential test scores; and Board law establishes that a balancing test is required in these cases. Respondent notes that in weighing the employees' privacy interests versus the Charging Union's need for the information, it established a protocol for releasing the test scores which comports with the Board's decision in *Postal Service*, supra, and *Detroit Edison*.

In *Detroit Edison*, the union sought employees' aptitude test scores to support its allegation, in a grievance case, that the employer had violated a provision of the CBA requiring that promotions be based on seniority "whenever reasonable qualifications and abilities of the employees being considered are not significantly different." The employer would only provide the union the test scores with the names redacted and nonredacted test scores only with an employee's consent. In balancing the parties' competing interests, the Court determined that "any possible impairment of the function of the [u]nion in processing the grievances of employees is more than justified by the interests served in conditioning the disclosure of the test scores upon the consent of the very employees whose grievance is being processed." (Id. at 318.)

The facts at issue, however, are more similar to those in *Postal Service*, supra. In that case, the union sought the Exam 473 test scores to evaluate the whether employees with veterans preference were being ranked accurately on the hiring register. Assessing their competing interests by using the balancing test laid out in *Detroit Edison*, the Board determined that although

[22] In its brief, the General Counsel moved, pursuant to the Board's Rules and Regulations Sec. 102.17, for the amendment of paragraph 10 of the complaint in Case 07–CA–159684 to allege "[s]ince about July 25, 2015, Respondent has failed and refused to completely furnish the Charging Party with all of the underlying documentation used to establish the modified/changed 'seniority dates and ranks' as described above in paragraph 7, except for the information provided to it as described above in paragraph 7." (GC Br. 17.) Respondent did not submit a reply. Based on a review of the General Counsel's motion, the Board's Rules and Regulations Section 102.17, and the facts, I have granted the General Counsel's motion for the above-stated amendment to the complaint.

[23] 359 NLRB 1052 (2013).

the employees had a confidentiality interest that deserved protection, the union had "a strong need for the test scores, and disclosure is unlikely to negatively affect anyone's view of the applicants' basic competence." *Postal Service* at 5 (internal quotations not included). The Board also disagreed with the Postal Service's argument that it reasonably accommodated the union's interest by offering to furnish the test scores if the union obtained the employees' consent. The Board wrote,

> Unlike in *Detroit Edison*, if one or more of the nonveteran employees withholds his consent, the Union will be effectively precluded from determining whether the Postal Service had complied with the collective-bargaining agreement. Moreover, there is a substantial risk that one or more nonveteran employees will withhold their consent because they stand to suffer a reduction in seniority if the Union were to prevail on a grievance.

The case at issue includes the same risks. Gillie likewise requested the information because he believed a particular veteran employee, Henry, had received more points than allowed. Consequently, if one or more of the employees on the seniority list withholds his or her consent, the Charging Union would be "effectively precluded" from assessing whether Respondent carried out the terms of the CBA related to this issue. Further, if the Charging Union were required to get the employees' consent before Respondent released the test scores and exams, the union's right to enforce most provisions of the CBA and obtain necessary and relevant information would depend on the desires of bargaining unit employees. This is not an outcome envisioned by the Act. The union is empowered by the Act with enforcing Respondent's obligations under the CBA through the grievance process or any other legal means. To accept Respondent's argument would be to strip the Union, for all practical purpose, of its statutory duties as the exclusive bargaining representative of unit employees and its power to enforce violations of the CBA. *United Graphics, Inc.*, 281 NLRB 463, 465 (1986) (the Board held that information presumptively relevant to the union's role as bargaining agent must be provided to the union as it "relates directly to the policing of contract terms.").

Even assuming Respondent's interest outweighed the Charging Union's need for the information, Respondent was still obligated to engage in accommodative bargaining with the union, but the evidence shows it failed to meet its duty on this point. It is undisputed that Respondent's initial response to the unions' information request was submitted on September 2 and consisted of a partial response. Respondent forwarded the Charging Union its version of a "corrected" seniority list with an explanation that the "wrong column was entered on WEBCOINS" which caused the inaccuracies on the previous list given to Gille. Respondent reiterated that it has not provided the "test scores" because Gillie had not completed the PS Form 6105 and obtained the employees' written consent. (GC Exh. 20.) Consequently, there is no evidence that in its September 2 response, Respondent offered to find an alternative means for the Charging Union to access the information. Shortly thereafter, the unions filed separate charges with the NLRB. During this interim period (the time between Respondent's refusal to fully provide the requested information and the Unions filing charges with the NLRB), there is no evidence that Respondent made any attempts at engaging the unions in accommodative bargaining.

Accordingly, I find that Respondent's failure to provide the information requested in item 2 of the July 25 RFI was unreasonable and therefore violated Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

CONCLUSIONS OF LAW

1. The Respondent, United States Postal Service, provides postal service for the United States and operates various facilities throughout the United States. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

2. The National Association of Letter Carriers, AFL–CIO and the Charging Union are labor organizations within the meaning of Section 2(5) of the Act.

3. By its unreasonable delay in providing the necessary and relevant information requested by the Charging Union in writing on or about October 22, 2014, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

4. By its unreasonable delay and failure/refusal in providing the necessary and relevant information requested by the Charging Union in writing on or about July 25, 2015, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

. The Respondent has not violated the Act except as set forth above.

REMEDY

The General Counsel requests that I order as appropriate remedies for the Respondent's unreasonable delay in providing the Charging Union with the requested information in violation of Section 8(a)(5) and (1) of the Act: an affirmative bargaining order; a broad cease-and-desist order; and a prohibition on Respondent from violating the Act "in any other manner." While I find that traditional remedies are inappropriate in this matter, I reject the General Counsel's argument that notices should be posted at all Respondent's facilities within the state of Michigan.

In *Hickmott Foods*, 242 NLRB 1357 (1987), the Board held that a broad cease-and-desist order is warranted only when it has been established that an employer has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate its general disregard for the employees' statutory rights. The Board has also found that a broad posting requirement was appropriate when the respondent displayed "a clear pattern or practice of unlawful conduct." *Postal Service,* 339 NLRB 1162, 1162 (2003). I find that the evidence in this case is sufficient to show that in the Detroit District, which includes the Flint installation (and the facilities it encompasses), Respondent has shown a proclivity to violate the Act or engaged in such egregious misconduct as to demonstrate a disregard for employees' fundamental statutory rights. The settlements, judgments, and orders cited by the General Coun-

sel to support issuance of the requested remedies involve both the Detroit District and its facilities. A notice posting throughout the state of Michigan is not warranted because there is credible evidence that management in the Detroit District does not have control over any area besides the Detroit District. There was no evidence that the Detroit District was or has been involved in a coordinated state-wide effort with the other areas in Michigan to circumvent the process for responding to RFIs.

Therefore, Respondent will be ordered to post and communicate by electronic post to employees the attached Appendix and notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

ORDER

Respondent, United States Postal Service, in the Flint installation and the facilities it encompasses, and the Detroit District its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Branch 256, National Association of Letter Carriers (NALC), AFL–CIO (Charging Union) by failing and refusing to and, or unreasonably delaying in providing the Charging Union, information requested that is necessary and relevant to its role as the exclusive representative of the employees in following unit:

> All full-time and regular part-time city letter carriers employed by Respondent at various facilities throughout the United States, but excluding professional employees, employees engaged in personnel work in other than a purely nonconfidential clerical capacity, postal inspection service employees, employees in the supplemental work force, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, managerial employees, supervisory personnel, and security guards as defined in Public Law 9-375, 1201(2).

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Within 14 days from the date of the Board's Order, furnish the Union with all information it has requested since on or about October 22, 2014, and July 25, 2015.

(b) Within 14 days after service by the Region, post at its facilities within the Detroit District, including the Flint installation (and the facilities it encompasses), copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 22, 2014.

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

Dated: Washington, D.C. December 2, 2016

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights

WE WILL NOT refuse to bargain collectively and in good faith with Branch 256, National Association of Letter Carriers (NALC), AFL–CIO (Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our unit employees at our Detroit District facilities, including the Flint, Michigan installation (and the facilities it encompasses).

WE WILL NOT refuse to bargain collectively and in good faith with Branch 256, National Association of Letter Carriers (NALC), AFL–CIO (Union) by an unreasonable delay in furnishing it with requested information in a timely manner that is relevant and necessary to the Union's performance of its duties as the collective-bargaining representative of our unit employees at our Detroit District facilities, including the Flint, Michigan installation (and the facilities it encompasses).

[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the servicing representative of the exclusive collective-bargaining representative of our employees in the Unit at our Detroit District facilities, including Flint, Michigan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL provide the Union with the underlying documentation we used to establish the modified/changed seniority dates and ranks of Flint city carrier assistants with a seniority date craft for 2015, as requested by the Union on about July 25, 2015.

UNITED STATES POSTAL SERVICE

The Administrative Law Judge's decision can be found at www.nlrb.gov/case 07–CA–145159 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.