UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MONDELEZ GLOBAL, LLC

and Case 13–CA–170125

BAKERY, CONFECTIONERY, TOBACCO
WORKERS & GRAIN MILLERS LOCAL
UNION NO. 300, AFL–CIO–CLC

Vivian P. Robles, Esq., for the
General Counsel.

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Illinois, for the Respondent.

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Illinois, for the Charging Party.

DECISION

CHARLES J. MUHL, Administrative Law Judge. The General Counsel's complaint in this case alleges that Mondelez Global, LLC (the Respondent) violated Section 8(a)(5) of the National Labor Relations Act, by refusing to provide information to Local Union No. 300 of the Bakery, Confectionary, Tobacco Workers & Grain Millers, AFL–CIO–CLC (the Union). The Union's information request followed the Respondent's announcement of its intent to transfer certain bargaining unit work from its Chicago facility to one located in Salinas, Mexico. The Union filed both an unfair labor practice charge and a grievance over the unit work transfer. Thereafter, the Union sought numerous pieces of information concerning the Salinas operation and the employees there. Although it provided partial responses, the Respondent steadfastly objected to the Union's requests, based on the lack of relevance of the information to the grievance or any of the Union's other representational duties.

On April 28, 2017, the parties filed a joint motion and stipulation of facts requesting that this case be decided without a hearing and based on the stipulated record. On the same date, the

General Counsel and the Respondent also filed Statements of Position, pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations. On May 3, 2017, I granted the motion and approved the stipulation of facts via written order. Thereafter, the parties filed briefs on June 7, 2017. Based upon the parties' submissions and the entire stipulated record, I find the Respondent did not violate the Act as alleged.[1]

FINDINGS OF FACT

I. JURISDICTION

The Respondent is engaged in the business of the production and distribution of food products from a facility located in Chicago, Illinois. In conducting its business operations during the past 12 months, the Respondent has purchased and received, at its Chicago facility, goods valued in excess of $50,000 directly from points outside the State of Illinois. Accordingly, I find that, at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, as the Respondent admits in its answer to the complaint. I also find, and the Respondent admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent and the Union have a longstanding collective-bargaining relationship going back to 1950. The bargaining unit contains numerous job classifications, most of which are involved in baking and packing Nabisco food products. The employees work at the Respondent's Chicago bakery, Chicago distribution center, and Addison sales branch. The parties' most recent contract ran from February 28, 2012, to February 29, 2016.

On July 29, 2015, the Respondent apparently informed the Union of its intent to transfer unit work from its Chicago facility to a facility located in Salinas, Mexico. Then on December 11, 2015, the Union filed a grievance claiming the transfer of this unit work violated the parties' contract. The grievance alleged the Respondent breached the following contract provisions:

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[1] On February 22, 2016, the Union initiated this case by filing the original unfair labor practice charge against the Respondent. Region 13 of the National Labor Relations Board (the Board) docketed the charge as Case 13–CA–170125. On September 23, 2016, the General Counsel issued a complaint, alleging that the Respondent violated Section 8(a)(5) of the National Labor Relations Act (the Act). The complaint was consolidated with Cases 13–CA–176539 and 13–CA–177235. Those cases later were resolved with an informal settlement and severed from this case. On November 4, 2016, the Respondent filed a timely answer to the complaint, denying the substantive allegations.

ARTICLE 1 – RECOGNITION

Local #300 of the BAKERY, CONFECTIONERY, TOBACCO WORKERS' & GRAIN MILLERS INTERNATIONAL UNION, A.F.L.-C.I.O. is the sole collective bargaining agency (sic) for the employees of the Company, and all other employees subject to this Agreement who are now or may be hereinafter employed in the classifications listed in the Classification and Rate Schedules attached hereto, for the following locations: Chicago Bakery; Chicago Distribution Center; Addison Sales Branch.

ARTICLE 39 – SUCCESSORSHIP

The agreement shall be binding upon all parties, their successors, administrators, executors, and assigns. It is agreed that in the event the company sells, leases, transfers or assigns a manufacturing facility, the Company will require the purchasers, as a condition of sales and as part of the sale agreement, to assume and be bound by this collective bargaining agreement. Additionally, the purchasers must, as a condition of sale, be required to recognize the Bakery, Confectionery, Tobacco Workers & Grain Millers International Union as the bargaining representative for the employees within the existing unit.

ARTICLE 41 – MISCELLANEOUS CLAUSES

Product Sourcing

The parties recognize the excellent progress that Nabisco has made in repatriation of products since the Labor-Management Conference in 1994 in San Antonio, Texas. The parties will continue to foster the vision matrix, which will enable the Company to consider opportunities for additional repatriation. The parties further acknowledge that the Company retains the right to determine where products are produced.

Outsourcing

The BCTGM International Union and the Company agree to meet and discuss opportunities for additional repatriation of Nabisco products.

Subcontracting

It is understood and agreed that the decision to subcontract shall be made by management, and that such decisions will be discussed with the Local Union at a time in advance of the actual subcontract. Management shall inform the Local Union's designated representative whenever any work is to be subcontracted and will discuss with the Local Union the reasons for such subcontracted work. The Company also agrees it will not subcontract any work provided it then has sufficient manpower, skills, ability and

> equipment in the plant to timely and efficiently perform the work involved, keeping in mind the first priority of our maintenance employees is the maintenance of our equipment. The Company recognizes the Union's rights on the issue of subcontracting.[2]

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Just 3 days after the grievance filing, the Union filed an amended unfair labor practice charge against the Respondent with the Board in a different case, Case 13–CA–165495.[3] The amendments included new allegations that the Respondent violated Section 8(a)(5) by refusing to bargain in good faith with the Union over the transfer of bargaining unit work from Chicago to
10 Salinas. It also alleged the Respondent's transfer violated Section 8(a)(3), because it was designed to weaken the Union's status as the bargaining representative.

A. The Union's January 27, 2016 Information Request and Subsequent Communications Regarding the Request

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On January 27, 2016, the Union submitted a written request for information to the Respondent.[4] The Union asked for the following:

1. Who is the "Employer" for the Salinas workers?
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2. How many employees will be utilized at the Salinas operation to perform the Local bargaining unit work which the company intends to transfer?
3. Have any of those employees been hired, and, if so, when were they hired and the number of such employees?
4. Are the employees who will be performing the transferred bargaining unit
25 work covered by a collective-bargaining agreement; and, if so, the Union requests a copy of the agreement?
5. Are the employees who will be performing the transferred bargaining unit represented by a labor organization in connection with their hours, wages and working conditions and if so was the labor organization selected by the
30 employees? If the labor organization was selected by the employees when and how did that occur. If the employees did not participate in the selection of the labor organization when and how was the selection made? If there is a labor organization in place, has the Mexican government certified the organization as the representative of the employees and if so, the Union
35 requests a copy of the certification?
6. What is or will be the hourly wage and benefits, if any, of the Salinas employees who will be performing the transferred bargaining unit work function?

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[2] Jt. Exhs. 7, 8. When the grievance was filed, the Union also claimed a violation of the contract's prohibition on discrimination based on age and minority status. However, the Union later withdrew that contention. Stipulation of facts, par. 29.

[3] Jt. Exh. 29.

[4] Jt. Exh. 9. All dates hereinafter are in 2016, unless otherwise specified.

7. When were the production facilities to be used for the production of the transferred bargaining unit work ordered from the suppliers? The Union requests copies of the orders.
8. When were the production facilities installed or will be installed at the Salinas site?

In its letter, the Union stated only that the information requested was "essential to processing" the transfer-of-unit-work grievance to arbitration. It provided no other justification for the request. In a letter to the Union's president and business agent Edward Burpo dated January 29, Deborah Seeber, the Respondent's human resources manager, stated the Respondent was reviewing the information request and would respond in due course. She also said that, at first glance, she was unsure how the requests related to the contract provisions at issue in the grievance. Seeber emailed Burpo on February 5, further advising him that the Respondent was working through the information request and would respond within 1 to 3 weeks.

In a letter dated February 17, Seeber provided that response.[5] She stated general objections to the information request, based upon it being overbroad, burdensome, and irrelevant to the violations alleged in the grievance. She then provided information in response to certain of the requests. Seeber gave the name of the legal entity that was the employer of the Salinas workers. She also provided the name of the labor organization representing the Salinas employees. Seeber attached a July 21, 2015, communication from the Respondent to the Union. Therein, the Respondent stated the "average hourly wage and total compensation package" for Salinas workers was $7 per hour worked. Finally, she stated the Company invested millions to construct four new manufacturing lines in Salinas from August 2015 to December 11, 2015. Seeber did not provide responsive information to multiple requests. She did not explain how the labor organization representing Salinas employees became their bargaining representative. She did not answer whether the Salinas employees were covered by a collective-bargaining agreement or provide a copy of the agreement. Seeber did not state how many employees the Respondent intended to utilize in Salinas to perform transferred bargaining unit work. She also did not provide the purchase orders for equipment to be used in the Salinas manufacturing operation. Instead, and in response to request nos. 2 through 8, Seeber stated the information requested was unrelated to the contract provisions the Union was relying on in its grievance. She concluded the letter by asking the Union to explain the relevance of the information sought to the alleged contract violations. Almost immediately thereafter on February 19, the Union filed the unfair labor practice charge in this case.

Despite the charge filing, the Respondent and the Union continued to communicate for months thereafter concerning the information request. First, via letter dated March 11, Burpo set forth the Union's relevance explanations.[6] He justified multiple requests by a need to determine the timing of the Respondent's decision to transfer unit work to Salinas and when that decision was implemented. In particular and as to the request for the number of Salinas employees and when they were hired, Burpo pointed to the Respondent's obligation under Section 8(a)(5) to notify the Union of a change in the unit employees' terms and conditions of employment. He said the same timing explanation applied to the requests for the contract covering Salinas workers and the

[5] Jt. Exh. 12.
[6] Jt. Exh. 13.

purchase orders for the Salinas facility's equipment. With respect to whether the Salinas workers were covered by a collective-bargaining agreement and the contract itself, Burpo also relied upon the successorship clause in the Chicago contract. He quoted language from that provision stating the agreement is "binding upon all parties, their successors, administrators, executors, and assigns." Burpo then noted the Union's position that, pursuant to the clause, any bargaining unit work transferred to Salinas had to be performed under the terms of the Chicago contract. Regarding the request for when and how the union representing the Salinas workers became their bargaining representative, Burpo stated the Union needed to determine if the Respondent was in compliance with a requirement in the North American Agreement on Labor Cooperation (NAALC). The NAALC is a side agreement to the North American Free Trade Agreement (NAFTA). Burpo said, if a labor organization had been imposed on the Salinas workers without a free, democratic process, the Respondent would be in violation of the NAALC, as well as the "bargaining standards" in Section 8(a)(5).

On April 6, the Union filed a complaint against the Mexican government with the Office of Trade and Labor Affairs (OTLA). OTLA is an agency within the United States Department of Labor. The complaint asserted NAALC violations related to the Respondent's operations in Salinas. Specifically, the Union alleged that the Federacion Obrera Sindicalista, the labor organization which the Respondent identified as the Salinas employees' bargaining representative, had a history of entering into "protection contracts" with employers. Those contracts were defined as ones that a union and employer agree to without the knowledge of workers, with an intent of avoiding bargaining that would improve employees' working conditions. The communication also detailed the inability of the Union to obtain, through the Mexican government and the Respondent, the actual contract covering the Salinas employees. Finally, the complaint alleged the Salinas employees had not voted for their union leaders. The Union asked that OTLA take several actions, including an investigation of the Respondent's alleged violations of the NAALC's labor principles. Via letter dated June 2, OTLA advised the Union that it was declining to accept the Union's submission for review. That decision was due to a prior submission from, among others, the United Food and Commercial Workers union to OTLA alleging substantially similar issues.[7]

Around the same time as OTLA's decision, the Respondent and the Union exchanged the next round of letters regarding the Union's information request. On May 31, Seeber sent a letter to the Union with additional responsive information.[8] Seeber stated that, in June 2014, the Respondent's Board of Directors approved investment in the four new manufacturing lines. She said that the Company began purchasing the equipment in October 2014. She also expressed a willingness to provide the equipment purchase orders, if the parties could reach a confidentiality agreement. She contended those orders had confidential "pricing and vendor identification" information. Seeber stated the Respondent notified the Union of its intent to invest in four new manufacturing lines on April 8, 2015, and sought to bargain with the Union over where those lines would be installed. She stated that the technician and helper classifications in Salinas were covered by a collective-bargaining agreement effective September 3, 2015. Seeber conveyed that the Respondent began recruiting employees for the Salinas lines in September 2015, and hired the first

[7] Jt. Exhs. 14, 15.
[8] Jt. Exh. 16.

employee on October 15, 2015. She also stated that the exact number of employees who would work on the new lines was unknown.

Seeber rejected the Union's relevance explanations as to other requests. First, she restated the Respondent's objection that the number of Salinas employees performing bargaining unit work and their hire dates had no correlation with the grievance issues. She refused to provide the collective-bargaining agreement covering the Salinas employees for the same reason. Seeber also rejected the Union's reliance on the successorship clause in the parties' contract to establish the relevance of the Salinas contract. Seeber contended the clause dealt only with the sale, lease, transfer, or assignment of a manufacturing facility, not the transfer of bargaining unit work amongst the Respondent's facilities. Finally, she refused to provide any additional information on how the Salinas workers' union was selected. She stated that the union selection process and the Company's NAALC compliance were not within the Board's jurisdiction. She noted the Union could use NAALC procedures to obtain the information it was seeking.

Ronald Baker, the Union's strategic campaign coordinator, responded via letter dated June 2.[9] He spent the bulk of the letter discussing the Union's contention that the Respondent went through the motions in negotiations over where the new product lines would be located. He contended the Company always intended to place them in Mexico. With respect to the information request, Baker stated the Respondent knew how many employees were assigned to the Salinas lines, but refused to provide that information. As to the Union's protection contract claim, he noted that the Salinas collective-bargaining agreement effective date of September 3, 2015, was well before the October 15, 2015, first hire date of a new employee.

From August 9 to 15, the Respondent and the Union again exchanged communications regarding the Union's information request and a proposed confidentiality agreement.[10] In a letter dated August 9, Seeber rehashed earlier arguments advanced by the Respondent in rejecting the relevance of the Union's requests for information. In particular, she identified as irrelevant the requests for a copy of the contract covering Salinas workers and the number of employees working at the Salinas facility. Regarding the request for equipment purchase orders, Seeber included a proposed confidentiality agreement. On that same date, Baker emailed Seeber a response and questioned whether the confidentiality agreement she sent was an outdated version. He indicated there was "a new version agreed to by corporate" and attached that version. He asked Seeber if the Company would use the new one to address the information requests. On August 11, Seeber responded via email and told Baker the confidentiality agreement Baker sent to her applied to successor contract negotiations. She indicated she wanted the Union to consider the confidentiality agreement she sent on August 9 with respect to the information requests. Baker responded via email the same day, rejecting that idea and reiterating the Union's desire to use the confidentiality agreement applicable to the successor contract negotiations. Via email dated August 15, Seeber replied that the Respondent felt a separate confidentiality agreement was appropriate. She asked Baker to contact the Respondent's attorney to negotiate it, if the Union was interested. However, no

[9] Jt. Exh. 17.

[10] Jt. Exhs. 18, 20–23.

further discussions took place thereafter concerning a confidentiality agreement covering the Union's January 27 information request.[11]

B. The Union's Subpoena for the Arbitration of its Transfer-of-Unit-Work Grievance

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The Union's grievance over the Respondent's transfer of bargaining unit work to Salinas was scheduled for arbitration on November 7. Shortly before that on October 24, the Union served a subpoena duces tecum on the Respondent. Among the documents the Union subpoenaed for the arbitration were items the Respondent previously refused to provide in response to the Union's
10 January 27 information request. They included the collective-bargaining agreement covering the Salinas employees; the number of employees working on the new Salinas lines making products previously manufactured in Chicago; the benefits provided to the Salinas employees; and invoices and orders covering the production facilities in Salinas. The Respondent then filed a motion to quash the subpoena.

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On November 4, the arbitrator held a conference call and heard arguments from the parties on the subpoena. The arbitrator ruled that the Union's request for the collective-bargaining agreement covering Salinas employees was irrelevant to the issues presented by the grievance. The arbitrator also ruled the Respondent had to produce the other documents requested in the subpoena.
20 However, the arbitrator gave the Respondent the opportunity to submit those documents to him in redacted and unredacted form. This would allow the arbitrator to determine if the proposed redactions were appropriate. Finally, the arbitrator acknowledged the parties would negotiate a confidentiality agreement to cover any of the documents the arbitrator ruled had to be produced.[12]

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[11] Seeber's May 31 statement that the purchase orders contained confidential pricing and vendor identification information was the only contemporaneous one made by a Respondent representative concerning confidentiality. However, in the stipulated record, the Respondent submitted the declaration of Pamela DiStefano, its director of labor relations for North America, to supplement its evidence concerning the need for confidentiality. (Jt. Exh. 19.) The parties' inclusion of this declaration in the stipulated record, and my consideration of it, are proper. *American Guild of Variety Artists, AFL–CIO (Golden Triangle Restaurant, Inc.)*, 155 NLRB 1020, 1020 fn. 2 (1965). In the declaration, DiStefano stated the Respondent deemed certain requested information to be "highly confidential and proprietary." She said the Salinas collective-bargaining agreement would reveal labor costs and certain aspects of the Respondent's manufacturing process there. She stated the number of Salinas employees in manufacturing positions would reveal the nature and extent of that plant's production process. She also claimed the formation of the Salinas union would reveal the Respondent's labor relations strategies. Finally, she stated that information on the Respondent's equipment purchases in Salinas would reveal supplier pricing information, which resulted from years of goodwill the Company built up from its purchasing track record. She then set forth her "belief" that all of this information would be of interest to the Respondent's competitors.

[12] From December 30 to April 14, 2017, the attorneys for the Respondent and the Union exchanged numerous emails regarding a proposed confidentiality agreement covering the documents the Union subpoenaed from the Respondent for the arbitration. (Jt. Exh. 27.) I do not find those discussions relevant to the issues in this case and I have not considered them in rendering this decision. The Union's arbitration subpoena contained some, but not all, of the items in its January 27 information request to the Respondent. In these communications, the attorneys never discussed applying the confidentiality agreement to the entire information request. Therefore, the Respondent cannot rely on these discussions to support any contention that it sought to bargain an accommodation between the Union's need for the information requested in its January 27 letter and any justified confidentiality interest of the Respondent.

In order to address the document production issues, the scheduled arbitration was postponed until April 25, 2017. At the time of the submission of the stipulated record in this case, the arbitration had been postponed indefinitely, but remained pending.

C. The Status of the Union's Other Unfair Labor Practice Charge

As for Case 13–CA–165495, the Regional Director for Region 13 of the Board, via letter dated October 4, dismissed the Union's charge. The Director concluded that the Respondent met its bargaining obligations under Section 8(a)(5), when it transferred unit work to Mexico. The Director found that the Respondent had not presented the transfer of unit work to the Union as a fait accompli, when it offered to bargain. The Director also concluded that the transfer was based on economic reasons, not a discriminatory motive. The Union appealed the dismissal to the General Counsel's Office of Appeals. Via letter dated February 23, 2017, the Office of Appeals denied the Union's appeal. The Union subsequently filed a motion for reconsideration of that decision. On March 13, 2017, the Office of Appeals advised the Union via letter that it would conduct "a fresh review" of the investigatory file. On July 31, 2017, the Office of Appeals denied the Union's motion for reconsideration.[13]

ANALYSIS

The General Counsel's complaint alleges that the Respondent violated Section 8(a)(5) by refusing to furnish the information requested in items 2–8 of the Union's January 27 letter.

An employer has a statutory obligation to provide to a union that represents its employees, on request, information that is relevant and necessary to the union's performance of its duties as the exclusive collective-bargaining representative. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Where the information requested concerns nonunit employees, the union bears the burden of establishing relevancy. *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997). To demonstrate relevancy, a liberal, discovery-type standard applies and the union's initial showing is not a burdensome or overwhelming one. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). The union must demonstrate a "probability that the desired information [i]s relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Ibid. Nonetheless, where the request is for information with respect to matters outside the unit, the standard is somewhat narrower and relevance is required to be somewhat more precise. *Ohio Power Co.*, 216 NLRB 987, 991 (1975). The obligation to furnish information is not unlimited and, where the information is plainly irrelevant to any dispute, there is no duty to provide it. Ibid.

In this case, the Respondent did provide a number of partial responses to the Union's information requests. Prior to addressing the merits, then, it is worth noting the exact information the Respondent refused to provide. The items include the number of Salinas employees who would be performing the bargaining unit work transferred from Chicago; the collective-bargaining

[13] Jt. Exhs. 30–32. The denial of the Union's motion for reconsideration is not in the stipulated record, since it occurred after the record was approved. However, the Board's public case docketing system indicates that a "denial letter" issued in the case on July 31, 2017. I take administrative notice of that action.

agreement covering Salinas employees; a complete answer concerning the specific hourly wage and benefits for all job classifications performing transferred bargaining unit work in Salinas; when and how the labor organization which represents Salinas employees became their bargaining representative; and the purchase orders for equipment used in the Salinas manufacturing lines.

The threshold issue in dispute is whether the information requested by the Union was relevant to its representational duties. In that regard, the General Counsel and the Union first argue that the information was relevant to the Union's processing of the transfer-of-unit-work grievance.

The 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. *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000). The Board does not pass on the merits of a grievance in determining whether information related to its processing is relevant. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). It is sufficient if the requested information has some bearing on the issue for which it is being sought. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104–1105 (1991). However, in order to establish the relevance of an information request to a grievance, a union must do more than cite a provision of the collective-bargaining agreement. *Disneyland Park*, 350 NLRB at 1258. It also must show more than a mere concoction of some general theory which explains how the information would be useful to the union in determining if the employer has committed some unknown contract violation. *The New York Times Co.*, 270 NLRB 1267, 1275 (1984). The required showing is that the contract provision is related to the matter about which information is sought, and the matter is within the union's responsibilities as the collective-bargaining representative.

Applying that standard here, I conclude the evidence is insufficient to establish the necessary relationship between the alleged contract violations in the grievance and the information sought. First, in the request itself, the Union stated only that the information was "essential to processing the grievance." But it did not provide a specific explanation as to how it was essential, or even relevant. The Union's failure to provide anything more than this conclusory statement is insufficient to establish relevance. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979) ("A union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested.") Second, in its communications with the Respondent thereafter, the Union only mentioned one contract provision relied upon in the grievance: the successorship clause. In its March 11 and June 2 letters, the Union contended that clause required the Respondent to apply the Chicago contract to any bargaining unit work performed in Salinas. It claimed the collective-bargaining agreement covering the Salinas employees was relevant to that contention. However, the relevance of the Salinas contract to that argument is not at all apparent and the Union never provided any explanation to establish a connection. By its plain language, the successorship clause requires a purchaser of a Respondent manufacturing facility to continue recognizing the Union as the employees' bargaining representative and adhere to the existing Chicago collective-bargaining agreement. The logical question raised by the Union's contention is whether the Respondent's transfer of work between two of its own facilities qualifies as a "transfer or assignment" of a manufacturing facility to a purchaser. The terms and conditions of employment of the Salinas workers, as reflected in their collective-bargaining agreement, have no bearing on that question. Finally, the Union made no other assertions in its communications about the information request or in the stipulated facts to establish

that the requested information was relevant to the grievance.[14] For all these reasons, I conclude this showing falls short of meeting the required burden. *Disneyland Park*, 350 NLRB at 1258–1259 (union did not demonstrate relevance of subcontracting information it requested, where it simply cited provision of the collective-bargaining agreement that prohibited subcontracting if it resulted in a termination, layoff, or failure to recall unit employees from layoff, but made no claim that any of those events occurred); *DaimlerChrysler Corp.*, 344 NLRB 1324, 1330 (2005) (request for lease agreement for new building to which employees were relocated and appropriation request used to fund the relocation were not relevant to a grievance over failure to include union in the decision-making process for the relocation, new building layout, and seating arrangements of employees).

The General Counsel relies upon the Board decisions in *United States Postal Service*, 364 NLRB No. 27 (2016) and *Earthgrains Baking Companies, Inc.*, 327 NLRB 605 (1999), to support the argument that the information requested is relevant to grievance processing. In the first case, the Postal Service entered into a subcontract with Staples, pursuant to which Staples would offer certain Postal Service products and services to its customers. After learning of the arrangement, the union submitted an information request seeking the subcontract, as well as all correspondence between the two entities and further information concerning their business relationship. To demonstrate relevance, the union relied, in part, on a subcontracting provision in its collective-bargaining agreement with the Postal Service. That provision required the Postal Service to bargain with the union over subcontracting that would have a significant impact on bargaining unit work. The Board agreed that the requested information was relevant to the union determining if it could invoke that contract provision.

In *Earthgrains Baking*, the Board affirmed an administrative law judge's conclusion that an employer unlawfully refused to provide the wholesale prices it charged a particular customer for products. There, the company was engaged in the baking, marketing, and delivery of bread and other baking products to individual stores and central distribution centers. The union represented the drivers/salesmen who sold and delivered the products. The parties' contract contained a provision limiting the products that could be delivered to central distribution centers to "secondary label," or cheaper, items. The union obtained objective evidence that the employer was delivering premium label products to a specific central distribution center. The union then requested the employer provide it with the prices the company charged that center for the products. That information would show whether the products delivered were premium or secondary label items. If they were premium, then the contract provision prohibiting distribution of such products to central distribution centers would be breached. Moreover, that breach would result in drivers being deprived of the higher commissions available on the sale of premium label items. Accordingly, the requested information was relevant to the union's representational functions.

I find this case inapposite to these two decisions. In *Postal Service*, the requested information plainly could assist the union in evaluating whether the Staples subcontract had a significant impact

[14] The only other contract provision the Union ever cited in its correspondence was Article 1, the recognition clause. However, the Union relied upon that clause in conjunction with its argument that the Respondent violated Section 8(a)(5), by not providing the Union with timely notice and an opportunity to bargain over the transfer of unit work. The Union's status as the employees' bargaining representative, as set forth in Article 1, was merely a necessary predicate to the claimed Section 8(a)(5) violation. It was not an independent basis for the grievance.

on bargaining unit work. Similarly, in *Earthgrains Baking*, the connection between the requested pricing information and the contract violation was obvious. In this case, no such connection has been demonstrated between the successorship provision and the Union's request for the Salinas collective-bargaining agreement. The Salinas employees' terms and conditions of employment set 5 forth in that contract do not relate in any way to the question of whether the Respondent transferred or assigned a manufacturing facility.

Accordingly, I conclude the General Counsel and Union have not demonstrated the relevance of the requested information to the transfer-of-unit-work grievance.

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The General Counsel and the Union also contend that the requested information is relevant to determining if the Respondent met its bargaining obligations for transferring unit work under Section 8(a)(5). The Union contemporaneously asserted this as a justification for all of its information requests, except as to the hourly wage and benefits of the Salinas workers. Specifically, 15 the Union argued that the information would enable it to determine the timing of the Respondent's decision to transfer unit work to Salinas. It noted the Respondent's obligation under Section 8(a)(5) to notify the Union about a major change in working conditions that would have an adverse impact on the bargaining unit. The Union then asserted that the Respondent's decision to transfer the unit work to Salinas was a "done deal" well before June 2014. However, whether the Respondent's 20 decision to transfer unit work to Mexico was a fait accompli, as the Union's argument suggests, was the very matter at issue in the Union's charge in Case 13–CA–165495. That charge was dismissed and the case is now closed, rendering the requested information irrelevant to that purpose. Even if the case remained pending, the Union filed that charge alleging the transfer of unit work violated Section 8(a)(5) on December 14, 2015. Then, the Union submitted its information request to the 25 Respondent on January 27, 2016, roughly 6 weeks later while the charge investigation was pending. It is well established that the Board's procedures do not include prehearing discovery. *Saginaw Control and Engineering, Inc.*, 339 NLRB 541, 544 (2003); *Union-Tribune Publishing Co.*, 307 NLRB 25, 26 (1992). Thus, when information is sought that relates to a pending charge, the Board generally will not find that a refusal to provide that information violates Section 8(a)(5). By arguing the Union 30 needed this information to determine if the Act was violated, the General Counsel and Union have conceded that the request was being used, at least in part, to acquire evidence for the Board case. That fact is evident from the timing of the charge filing and the subsequent information request. The Union is not entitled to use its information request as a discovery device. Because the Board prohibits finding a Section 8(a)(5) violation premised upon the refusal to provide such information, I 35 likewise conclude that relevancy cannot be established on this basis either.[15]

Along those same lines, the General Counsel argues that the Union needed the requested information, after the Respondent sought labor cost concessions from the Union to keep the unit

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[15] The employers in *Saginaw Control* and *Union-Tribune Publishing* specifically refused to provide requested information because of pending unfair labor practice charges. Here, the Respondent did not object to providing the information based upon the charge in Case 13–CA–165495. Nonetheless, I find that fact does not warrant a different result. The Board's concern with preventing prehearing discovery is not eviscerated by the Respondent's failure to assert this as a reason for not providing the information. I also find it immaterial that *Saginaw Control* and *Union-Tribune Publishing* involved information being sought to support Section 8(a)(3) charges. The prohibition on discovery applies to all Board cases, irrespective of which section of the Act is alleged to have been violated in a charge.

work in Chicago. However, the stipulated record does not contain the necessary facts to prove this assertion. Specifically, the record contains no facts concerning any bargaining, or lack thereof, between the Respondent and the Union over the decision to transfer unit work to Salinas.[16] In making this argument, the General Counsel relies solely on the July 21, 2015, email from the Respondent to the Union.[17] Therein, a company representative stated the Respondent informed the Union in April 2015 of its decision to invest in four new manufacturing lines. The representative stated the new lines would be placed either in Chicago or Salinas, replacing nine older lines in Chicago. The representative also stated the Company was seeking input from the Union regarding a $46 million difference between placing the full investment in Chicago versus Salinas. Presumably, that was the cost savings to the Respondent from installing the new lines in Mexico. The representative concluded the letter by saying the Union had declined the Respondent's offer to make a proposal to bridge the gap. The representative indicated the Company would make its decision regarding where the new lines would be located on July 22, 2015. Even if this communication establishes that the Respondent was seeking $46 million in cost savings to keep the unit work in Chicago, the only conclusion that could be drawn from this document regarding bargaining is the Union never took the Respondent up on its offer to make a proposal. Moreover, the Union never stated in any communication with the Respondent thereafter, or in the stipulated facts, that it needed the requested information, in order to develop a proposal to keep the unit work in Chicago. Based on this record, I cannot find that the requested information was relevant, because the Union needed it to intelligently bargain over cost savings to avoid the transfer of unit work.[18]

Finally, without citation to any case law, the General Counsel and the Union contend that the manner in which the Salinas employees came to be represented by a union is relevant to determining if the Respondent complied with the NAALC. In its communications with the Respondent, the Union argued that, if the Company breached the NAALC by imposing a labor organization on the Salinas employees, it will have violated the "bargaining standards" of Section

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[16] It is worth noting at this juncture that, in conference calls prior to the submission of the joint motion to decide this case pursuant to a stipulated record, the parties repeatedly were cautioned about the need to have all facts they intended to rely upon for their legal arguments in the stipulation. In particular, because no hearing testimony would be taken, I advised the parties the stipulated record had to contain all facts to support any argument being made about relevancy or confidentiality. Therefore, I have not considered facts asserted in the parties' briefs that were not contained in the stipulated record or legal arguments premised on facts not contained in the record.

[17] Jt. Exh. 12.

[18] The record also contains no basis for concluding that the information was relevant to effects bargaining. As a result, the Union's reliance in its brief on *Comar, Inc.*, 349 NLRB 342 (2007), and *Kathleen's Bakeshop, LLC*, 337 NLRB 1081 (2002), is misplaced. In those cases, the Board held that information about nonunit employees at another facility of an employer was relevant and had to be provided. But the involved unions there specifically stated at the time of the requests that they needed the information to engage in effects bargaining over the transfer of unit work. Among the issues to be bargained in those cases were the working conditions of unit employees who were being relocated to the other facilities. In this case, the record does not establish that the Union ever stated it needed the requested information to engage in effects bargaining. It also does not establish that any bargaining unit employees were being relocated to Salinas. Similarly, the General Counsel's reliance on *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016 (1979), is unavailing. The information requested in that case would have assisted the union in fully preparing for upcoming contract negotiations. Here, the Union never stated it needed the information about Salinas workers to bargain for the Chicago unit.

8(a)(5). The argument is nonsensical. The Respondent's bargaining obligation with the Union is for the Chicago bargaining unit, not the Salinas workers. Even if the Respondent installed a "protection union" in Salinas, the Board has no jurisdiction over its conduct there. Again, there simply is no connection between the process by which a union became the representative of the Salinas employees and the Union's representational duties for the Chicago unit. In *Southern California Gas Co.*, 342 NLRB 613, 614–616 (2004), the Board held that an employer lawfully refused to provide information to a union that was requested to support a safety complaint the union filed with a state agency. The Board concluded that the state agency complaint was an action outside of the collective-bargaining relationship. The Union's rejected submission to OTLA has an even more tenuous connection to its representational duties that the safety complaint in *Southern California Gas.* See also *Miami Rivet of Puerto Rico, Inc.*, 318 NLRB 769, 771 (1995) (information concerning whether employer enjoyed tax exemption and whether it notified governmental authorities about its plant closing decision was not relevant to union's representational duties). As a result, I hold that the relevance of the information requested cannot be established by the Respondent's alleged violation of the NAALC.

For all these reasons, I conclude the relevance of the requested information to the Union's representational duties has not been established. As a result, the Respondent's refusal to provide all of the information requested by the Union was lawful.[19]

[19] In its brief, the Respondent argued that the information requested by the Union was confidential and the Respondent sought an appropriate accommodation by bargaining with the Union over a confidentiality agreement. The Board has long held that, in dealing with union requests for relevant, but assertedly confidential information, a balance must be struck between a union's need for information against any legitimate or substantial confidentiality interests. *Pennsylvania Power and Light,* 301 NLRB at 1105–1106. Given that standard, a predicate for considering this defense is a finding that the requested information was relevant. Because I have concluded the Union failed to demonstrate relevance, this defense need not be addressed.

If an evaluation was required, I would find the Respondent did not establish a legitimate claim of confidentiality. A party asserting that requested, relevant information is confidential bears an initial burden of establishing a legitimate and substantial confidentiality interest. *Public Service Co. of New Mexico*, 364 NLRB No. 86, slip op. at 3 (2016). Blanket or speculative assertions of confidentiality, standing alone, are insufficient. *Mission Foods*, 345 NLRB 788, 791–792 (2005). The Respondent contends the requested information is "proprietary," a category of confidential information previously identified by the Board. Ibid. However, the statements of DiStefano and Seeber fall into the category of blanket and speculative assertions. Seeber and DiStefano both claimed, in a conclusory manner, that equipment pricing and vendor identification information was confidential. DiStefano also claimed, in conclusory fashion, that the Respondent's labor costs and labor relations strategies were confidential. She stated that disclosure of the information would reveal the plant's manufacturing processes, but did not explain how exactly that would happen. Thus, the Respondent has not made the necessary, particularized demonstration of why the information would trigger specific confidentiality concerns. *Howard Industries, Inc.*, 360 NLRB 891, 892–893 (2014) (no confidentiality claim established, where employer asserted that records showing the steps of the manufacturing process and amount of time it would take to complete each step would enable competitors to reverse engineer the process for themselves); *King Broadcasting Co.*, 324 NLRB 332, 338–339 (1997) (no confidentiality interest established, where employer claimed that disclosure to union of personal service contracts it had with on-air employees would result in other local television stations gaining a competitive advantage). In addition, DiStefano speculated that the Respondent's competitors would be interested in learning its labor costs and strategies in Mexico. However, she provided no evidence that the Union intended to disclose the requested information to competitors or previously shared information provided by the Respondent with competitors. Therefore, the Respondent likewise has not established a legitimate confidentiality claim on that basis. *Bridge, Structural & Ornamental Ironworkers Local 207*

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(a)(5) by refusing to provide all of the information requested by the Union in its January 27, 2016, letter.

10 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

15 The complaint is dismissed.

Dated, Washington, D.C., August 14, 2017.

Charles J. Muhl
Administrative Law Judge

(Steel Erecting Contractors), 319 NLRB 87, 91 (1995) (fear that union would turn over requested information to a committee which could use the information to recoup wage overpayments to apprentices did not permit union to refuse to provide the information). Cf. *Dallas & Mavis Forwarding Co.*, 291 NLRB 980, 984 (1988) (confidentiality interest established where employer demonstrated that confidential information revealed to union members in the past had fallen into the hands of competitors). Because the Respondent has not shown a legitimate confidentiality interest, consideration of the Respondent's bargaining efforts with the Union to reach a confidentiality agreement is unnecessary. *Detroit Newspaper Agency*, 317 NLRB 1071, 1074 (1995). For that same reason, I do not address the General Counsel's contention that the parties' communications about the proposed confidentiality agreement are inadmissible, pursuant to Federal Rule of Evidence 408.

[20] 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.