

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

ALCOA CORPORATION  
and

Case 25-CA-219925

UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND  
SERVICE WORKERS LOCAL 104

POST-HEARING BRIEF OF COUNSEL  
FOR THE GENERAL COUNSEL

Respectfully submitted by:

Raifael Williams

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I. INTRODUCTION

Briefly stated, this case involves unfair labor practices arising out of Alcoa Corporation's, hereinafter referred to as the Respondent's, instruction to employees not to discuss investigatory interviews with other employees; Respondent's failure and refusal to provide the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 104's, hereinafter referred to as the Union, with relevant and necessary information concerning the termination of an employee; and Respondent's failure and refusal to provide the Union with relevant and necessary information concerning the discharge of a bargaining unit employee in a timely manner.

Based upon the foregoing, Counsel for the General Counsel alleges in the Complaint that the Respondent violated Sections 8(a)(1) and (5) of the National Labor Relations Act, hereinafter referred to as the Act. Specifically, the General Counsel alleges that the Respondent violated Section 8(a)(1) of the Act by instructing employees not to discuss investigatory interviews with other employees about March 19 and 20 and April 3 and 5, 2018.<sup>1</sup> The Respondent also violated

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<sup>1</sup> These allegations are alleged in paragraph 5(a), (b), (c), and (d) and 8 of the Complaint (GC

Sections 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with relevant and necessary information, specifically, the names of employees who provided witness statements to Respondent as part of an investigation wherein an employee was terminated.<sup>2</sup> The Respondent further violated Sections 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with relevant and necessary information in a timely manner, specifically, the dates of the employee witness interviews<sup>3</sup>, as discussed below.

## II. STATEMENT OF THE FACTS

### A. Background

Respondent is a corporation with offices and places of business in Newburgh, Indiana, which is also known as its Warrick Operations, and is engaged in the business of manufacturing aluminum and aluminum products. The Respondent operates several departments: Finishing, Ingot, Pack Ship, Rolling, and Smelter. Each department is supervised by one manager and several supervisors. The Respondent employs around 1,200 bargaining unit employees. The Respondent and the Union also are parties to a collective-bargaining agreement, which is effective from May 16, 2014 to May 15, 2019. (TR 49-53; GC Ex 2).

Ed Hammersbach is the Vice President. He oversees the daily operations of Respondent's facility (TR 50-51). Terrence Carr is the Labor Relations Specialist. He has held this position since December 2017 (TR 48-49). Wade Shanks also serves as the Pack Ship Crew Leader (GC Ex 1(e)). Ken Hall is the Fabrication Manager. Tim Palummo is a supervisor (TR 13-15).

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Ex 1(e)).

<sup>2</sup> These allegations are alleged in paragraph 7(a)(i), 7(a)(ii), 7 (b), 7(c), and 9 of the Complaint (GC Ex 1(e)).

B. Respondent's Investigation

About March 2018, Labor Relations Specialist Carr was informed that Pack Ship Employee Ron Williams called a truck driver a racial slur. Pursuant to this information, Carr began an investigation. As part of his investigation, Carr conducted interviews with several employees about March 19 and 20 and April 3 and 5, 2018. During these interviews, Carr told the employees to keep in mind that their conversations were confidential. He also told them that they should keep their conversations confidential, including from supervision and other employees. He further told them that, if other people asked about their conversations with him, to decline to answer. None of the interviewed employees asked Carr to keep their conversations with him confidential (TR 13-14, 54). About April 6, 2018, Fabricated Products Manager Hall and Supervisor Palummo issued Williams a three-day suspension for creating a hostile work environment (TR 13-15; GC Ex 3).

C. Union's Requests for Information

On April 7, 2018, Union Representative Bruce Price emailed an information request to Carr asking for five items related to the three-day suspension issued to Williams. Specifically, Item 1 requested how Williams was creating a hostile work environment. Item 2 requested copies of all interview notes or video or anything else the Respondent was using during the investigation of the supposed hostile work environment. Item 3 requested video of the loading dock the last 14 days on day shift and, if Respondent was using outside truckers, anything showing Williams talking to them about safety or anything else. Item 4 requested a copy of the policy on hostile work environment. Item 5 requested a copy of Williams' disciplinary record. The Union needed the requested information to prepare for a pending hearing concerning

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<sup>3</sup> These allegations are alleged in paragraphs 7(d) and 9 of the Complaint (GC Ex 1(e)).

Williams' three-day suspension. Later that day, Labor Relations Specialist Carr sent an email to Price stating that the Respondent was working to provide data concerning Item 1 and would answer Item 1 when it was received. The email also stated that the Respondent was working on Item 3. The email further stated that Item 4 did not exist. Additionally, the email stated that Williams' disciplinary record was clear. On April 8, 2018, Carr sent an email to Price and attached notes in response to Items 1 and 2 of Price's April 7, 2018 information request. The notes did not contain the names of the employees who Carr had interviewed (TR 15-21; GC Ex 4; GC Ex 5; GC Ex 6).

On April 9, 2018, Fabricated Products Manager Hall sent a letter to Employee Williams stating that his three-day suspension had been converted to a termination effective on April 10, 2018. Also, on April 9, 2018, Union Representative Price filed a grievance concerning Williams' termination. On April 10, 2018, Union Business Agent Tim Underhill sent a letter to Supervisor Palummo stating that the Union wanted to process the grievance concerning Williams' termination to the second step of the parties' grievance procedure (TR 21-23; GC 7; GC 8).

About April 16, 2018, Union Business Agent Underhill submitted an information request to Labor Relations Specialist Carr requesting 11 items to investigate the grievance concerning Employee Williams' termination. Specifically, Item 4 requested a list of all safety protocols including rules that apply to truck drivers/contract employees pertaining to loading and unloading of their trucks; dates and times for which pack supervision had been approached concerning truck drivers/contract employees violating safety protocols, including names, dates and times of documented meetings for which truck drivers had been reinstructed on safety procedures; and the names of any truck drivers/contract employees that have been banned from

the Respondent since April 1, 2017. Item 6 requested information pertaining to the interviews of the one dayshift hourly employee and five afternoon shift hourly employees that were provided to the Respondent per the information request by Union Representative Price on or about April 7, 2018; the name that coincides with each interview; the date the interview took place; the location where the interview took place; and a list of names of who was present when the interviews took place. Item 8 requested a copy of notes from interviews of any other truck drivers/contract employees including date, time, and who was present (TR 24-29; GC Ex 9).

About April 23, 2018, Labor Relations Specialist Carr sent an email which provided information in response to Items 1, 2,3 ,5, 9, 10, and 11 of Union Business Underhill's April 16, 2018 information request. With respect to Item 4, Carr stated that hard copies would be bought to the Union hall. With respect to Item 6, Carr stated that "Based on confidentiality request of employee's names will not be shared at this time. Attached we have provided 4 sworn statements from hourly employees that were interviewed. All employees declined union representation. Terrence Carr interviewed all employees with 2 of the interviews taking place in Building 1 and 4 interviews in the Pack/Ship conference room." With respect to Item 8, Carr stated Underhill should see his response to Item 2 and notes for truck drivers and contract employees were provided in the initial information request. Carr also stated "Ginger Molak Night Hawk employee 3/13/18 unsure on exact time phone interview from Terrence's office interview completed by Terrence Carr" (TR 29- 32; GC Ex 10). About April 26, 2018, Underhill submitted an information request to Carr stating that Carr's April 23, 2018 response was incomplete. The information request also stated that Carr had not provided information in response to Items 4, 6, and 8 of his April 16, 2018 information request. Specifically, Carr did not

provide Item 6, which requested the names of the employees who were interviewed by Carr and the dates of the interviews (TR 33; GC Ex 11).

About April 30, 2018, Labor Relations Specialist Carr sent an email to Union Business Agent Underhill providing information in response to Items 4 and 8 of Underhill's April 16, 2018 information request. With respect to Item 6, Carr stated that "It is the Company's position that keeping the identities of witnesses confidential prior to arbitration outweighs the union's right to know their identities. This position is based on the fact that the employees requested and were given, an assurance of confidentiality at the time they gave their statements, and there is a significant risk that intimidation or harassment of witnesses will occur as demonstrated by a recent incident of misconduct reported to management. Furthermore, it is the Company's position that it has accommodated the Union's request for information by providing redacted copies the witness statements that contain the facts used by the Company to make the disciplinary decision. The information contained in the statements will allow the Union to effectively represent Mr. Williams during the grievance process." (TR 34-35; GC Ex 12)

About May 1, 2018, Union Business Agent Underhill submitted an information request to Carr stating, in relevant part, that the Respondent indicated that it interviewed six hourly employees, but the Respondent only provided four sworn statement. About early May 2018, Labor Relations Specialist Carr provided information in response to the May 1, 2018 information request (TR 35-38; GC Ex 13; GC Ex 14). About July 2, 2018, Carr emailed Underhill the interview dates of the six employees who gave interviews to Carr. However, Carr did not provide the names of employees who were interviewed (TR 38-39; GC Ex 15). To date, the Respondent has failed to furnish the Union with the names of employees who were interviewed.

### III. ARGUMENT

A. The Respondent Violated The Act By Instructing Employees to Not Discuss Investigatory Interviews With Other Employees.

Record evidence demonstrates that, about March 2018, Labor Relations Specialist Carr was informed that Pack Ship Employee Williams called a truck driver a racial slur. Pursuant to this information, Carr began an investigation. As part of his investigation, Carr conducted interviews with several employees about March 19 and 20 and April 3 and 5, 2018. At the hearing, the Respondent admitted that during these interviews Carr told the employees to keep in mind that their conversations were confidential. He also told them that they should keep their conversations confidential, including from supervision and other employees. He further told them that if other people asked about their conversations with him, to decline to answer. None of the interviewed employees asked Carr to keep their conversations with him confidential. (TR 13-14, 54). The Respondent also admitted that, prior to April 26, 2018, it did not have any belief and/or knowledge about any witness or employee being harassed or intimidated by any employee or Union official. (TR 54-55). Thus, the Respondent cannot establish a legitimate and substantial interest in keeping the employee interviews confidential. Therefore, Carr's instruction to employees to not discuss the investigatory interviews with other employees violated Section 8(a)(1) of the Act. Banner Estrella Medical Center, 362 NLRB 1108, 1109-13 (2015).

B. The Respondent Violated The Act By Failing and Refusing to Give the Names of the Employees Who Were Interviewed As Part of Its Investigation.

The Board has held that a union's request for witness names made in connection with a grievance constitutes a request for relevant and necessary information. American Medical Response West, 366 NLRB No. 146 (2018); Transport of New Jersey, 233 NLRB 694 (1977).

The Board has also held that, if relevancy is established, an employer may plead as a defense to providing the information a legitimate and confidential interest. Northern Indiana Public Service Company, 347 NLRB 210 (2006). The burden of establishing this defense of confidentiality rests on the employer or the party asserting it. Lasher Service Corporation, 332 NLRB 834 (2000). If the employer can establish a legitimate and confidential interest, the Board then weighs the party's interest against the union's need for the information. Even if the employer's interest based on confidentiality outweighs the union's interest for the relevant information, an employer must offer an accommodation. Borgess Medical Center, 342 NLRB 1105, 1106 (2004).

Record evidence demonstrates that, about March 2018, Labor Relations Specialist Carr was informed that Pack Ship Employee Williams called a truck driver a racial slur. Pursuant to this information, Carr began an investigation. As part of his investigation, Carr conducted interviews with several employees about March 19 and 20 and April 3 and 5, 2018. During these interviews, Carr told the employees to keep in mind that their conversations were confidential. He also told them that they should keep their conversations confidential, including from supervision and other employees. He further told them that, if other people asked about their conversations with him, to decline to answer. None of the interviewed employees asked Carr to keep their conversations with him confidential (TR 13-14, 54).

About April 6, 2018, Fabricated Products Manager Hall and Supervisor Palummo issued Williams a three-day suspension for creating a hostile work environment (TR 13-15; GC Ex 3). On April 9, 2018, Hall sent a letter to Employee Williams stating that his three-day suspension had been converted to a termination effective on April 10, 2018. Also, on April 9, 2018, Union Representative Price filed a grievance concerning Williams' termination. The grievance was

processed to the second step of the parties' grievance procedure on April 10, 2018 (TR 21-23; GC 7; GC 8).

About April 16, 2018, Union Business Agent Underhill emailed an information request to Labor Relations Specialist Carr requesting information to investigate the grievance concerning Employee Williams' termination. Item 6 of the information request asked, in relevant part, for the names of the employees who were interviewed and the date that the interview took place (TR 24-29; GC Ex 9). About April 23, 2018, Carr responded to the information request. With respect to Item 6, Carr stated, in relevant part, that "based on confidentiality request of employee's names will not be shared at this time." (TR 29- 32; GC Ex 10). About April 26, 2018, Underhill submitted an information request to Carr stating that Carr's April 23, 2018 response was incomplete. The email also stated that Carr had not provided information in response to several items of his April 16, 2018 information request, including Item 6, which requested, in relevant part, the names of the employees who were interviewed and the date that the interview took place (TR 33; GC Ex 11). About April 30, 2018, Carr sent an email to Underhill providing information in response to some items of Underhill's April 16, 2018 information request. With respect to Item 6, Carr stated that "It is the Company's position that keeping the identities of witnesses confidential prior to arbitration outweighs the union's right to know their identities. This position is based on the fact that the employees requested and were given, an assurance of confidentiality at the time they gave their statements, and there is a significant risk that intimidation or harassment of witnesses will occur as demonstrated by a recent incident of misconduct reported to management. Furthermore, it is the Company's position that it has accommodated the Union's request for information by providing redacted copies the witness statements that contain the facts used by the Company to make the

disciplinary decision. The information contained in the statements will allow the Union to effectively represent Mr. Williams during the grievance process.” (TR 34-35; GC Ex 12)

As discussed above, the Respondent asserts that it had a legitimate concern regarding the confidentiality of the names of the employee witnesses that Labor Relations Carr interviewed concerning the discipline of Employee Williams (TR 56-63). Carr testified that, on April 26, 2018, Pack Ship Crew Leader Wade Shanks sent him an email stating Employee John Taborn, who was interviewed by Carr regarding Williams, came to his office and told him that someone had put trash and salt in his books. The email also stated, in part, that Shanks thought that salt and trash were put in Taborn’s boots because of the situation concerning Williams’ termination and because Taborn ran against current Union representative James Cameron for the position of Union representative and lost (TR 56-60; Resp. Ex 1). Carr also testified that, on May 18, 2018, he received an email from Taborn. The email further stated that he told Underhill that he thought that Williams should have been terminated for making racial slurs and Underhill told Taborn that he could not believe that a Union steward would want another Union member to be terminated. Additionally, the email stated that Underhill told Taborn that he was no longer a Union steward because he made statements against Williams. Thus, the Respondent asserts that it had a legitimate concern regarding the confidentiality of the names of the witnesses that Carr interviewed based upon Employee Taborn’s alleged statement to Pack Ship Crew Leader Shanks about April 26, 2018 that someone had placed trash and salt in his boots; Shank’s email to Carr on April 26, 2018, and Taborn’s May 18, 2018 email to Carr (TR 56-63; Resp. Ex 1; Resp. Ex 2).

Despite Respondent’s assertions, the Respondent admitted that, during the interviews with employees, Labor Relations Specialist Carr told the employees: (1) to keep in mind that

their conversations were confidential; (2) they should keep their conversations confidential, including from supervision and other employees; and (3) if other people asked about their conversations with him, to decline to answer. The Respondent also admitted that none of the interviewed employees asked Carr to keep their conversations with him confidential (TR 13-14, 54). Furthermore, the Respondent admitted that, prior to April 26, 2018, it did not have any belief and/or knowledge about any witness or employee being harassed or intimidated by any employee or Union official (TR 54-55). Additionally, the Respondent did not provide any evidence demonstrating that the Union was involved with placing salt and trash in Taborn's boots. Finally, the Respondent denied the Union's request for the names of the employees who were interviewed by Carr prior to April 26, 2018, the date that Carr received an email from Pack Crew Leader Shanks concerning Employee Taborn. Specifically, the Respondent had denied the Union's April 16, 2018 request for the names of employees who were interviewed by Carr in its April 23, 2018 response to the Union (TR 24-32; GC Ex 9; GC Ex 10). Thus, it is clear that the Respondent cannot establish a legitimate and confidential interest that outweighed the Union's interest for the names of the employees who were interviewed by Carr. Therefore, the Respondent's failure to provide the Union with the names of the employees who were interviewed by the Respondent pursuant to the Union's April 16 and 26, 2018 information requests violated Section 8(a)(1) and (5) of the Act.

Even assuming that the Respondent can establish that it had a legitimate and confidentiality concern regarding the names of the witnesses that Carr interviewed based upon Taborn's alleged statements about April 26, 2018, the Respondent had already denied the Union's April 16, 2018 request for the names of employees who were interviewed by Carr in its April 23, 2018 response to the Union (TR 24-32; GC Ex 9; GC Ex 10). Therefore, at the very

least, the Respondent's failure and refusal to provide the Union with the names of the employees who were interviewed by the Respondent in its response to the Union's April 16, 2018 information request violated Section 8(a)(1) and (5) of the Act.

C. The Respondent Violated the Act By Unreasonably Delaying Providing the Union With the Dates of Employees Interviews

As discussed above, record evidence demonstrates that, on April 9, 2018, the Union filed a grievance concerning the termination of Employee Williams of the grievance (TR 21-23; GC Ex 7; GC Ex 8). As part of the Union's investigation, Union Business Agent Underhill submitted information requests to Labor Relations Specialist Carr about April 16 and 26, 2018 requesting information to investigate the grievance concerning Employee Williams' termination. Item 6 of the information requests asked, in relevant part, for the dates that the interviews took place (TR 24-29; GC Ex 9). The Respondent provided the Union with the dates of the employee interviews on July 2, 2018, almost three months after the Union's April 16, 2018 information request was submitted to the Respondent. Director of Labor Relations Carr testified that the delay in providing the Union with the dates of the employee interviews was an oversight on the part of the Respondent (TR 63). Even assuming that the Respondent failed to provide the Union with the dates of the employee interviews because of an oversight, such failure does not outweigh the Union's interest obtaining these necessary and relevant information. The Board has found a violation where delays in providing the union with information as short as 2.5 months have occurred. House of the Good Samaritan, 319 NLRB 392 (1995). Therefore, the Employer violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with the dates of the employee interviews in a timely manner.

#### IV. CONCLUSION

For the above-stated reasons, the Counsel for the General Counsel respectfully requests that the Administrative Law Judge find the aforementioned conduct of the Respondent to be in violation of the Act and recommend an appropriate remedy for said violations. Specifically, the Respondent's instruction to employees not to discuss investigatory interviews with other employees about March 19 and 20 and April 3 and 5, 2018 violated Section 8(a)(1) of the Act. Also, Respondent's failure and refusal to provide the Union with the names of the employees who were interviewed by the Respondent should be found to be violative of Section 8(a)(1) and (5) of the Act as a matter of law because the requested information is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of the Respondent's employees. Furthermore, the Respondent's unreasonable delay in providing the Union with the dates of the employee interviews should be found to be violative of Section 8(a)(1) and (5) of the Act as a matter of law because the requested information is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of the Respondent's employees.

The Counsel for the General Counsel respectfully requests that the Administrative Law Judge make findings of fact and conclusions of law based upon the language found in "Attachment A". The Counsel for the General Counsel also respectfully requests that the Administrative Law Judge order Respondent to post at its offices, notices containing assurances that Respondent shall not repeat the unfair labor practices found herein, and shall remedy them as ordered. The Counsel for the General Counsel further requests that such notice include the language found in "Attachment B".

DATED at Indianapolis, Indiana, this 12<sup>th</sup> day of March 2019.

Respectfully submitted,

/s/ Raifael Williams

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## Attachment A

### Proposed Findings of Fact and Conclusions of Law

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

2. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 104 is a labor organization within the meaning of Section 2(5) of the Act.

3. By instructing employees not to discuss their investigatory interviews with other employees, Respondent, Alcoa Corporation, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By failing and refusing to fully provide relevant information requested by the Union in Item 6 of its written request dated April 16, 2018, specifically witness names, Respondent, Alcoa Corporation, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

5. By failing and refusing to provide relevant information requested by the Union in Item 6 of its written request dated April 16, 2018, specifically the dates of employee interviews, in a timely manner, Respondent, Alcoa Corporation, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

6. The above violation is an unfair labor practice that affects commerce within the meaning of Section 2(6) and (7) of the Act.

Attachment B

Proposed Notice To Employees

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

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

**WE WILL NOT** unlawfully instruct employees not to discuss investigatory interviews with other employees.

**WE WILL NOT** refuse to bargain in good faith with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Local 104 as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

The employees described in Article 1, Section 1, Subsection A of the collective bargaining agreement between the Employer and the Union which is effective from May 16, 2014 to May 15, 2019.

**WE WILL NOT** refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

**WE WILL NOT** unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL** bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the above- described unit.

**WE WILL** provide the Union with the witness names it requested on April 16, 2018.

CERTIFICATE OF SERVICE

**The undersigned hereby certifies that a copy of the foregoing GENERAL COUNSEL'S POST-HEARING BRIEF was filed with the Division of Judges electronically and was electronically served upon the following person on this 12<sup>th</sup> day of March 2019:**

**Electronic Submission**

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