Barnard College *and* UAW Local 2110. Case 02–CA–200574

April 12, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On September 14, 2018, Administrative Law Judge Geoffrey Carter issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. April 12, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] In adopting the judge's finding that the Respondent did not violate Sec. 8(a)(5) and (1) of the Act by failing to provide information regarding faculty reappointments in response to the Union's May 31, 2017 information request, we stress that we, like the judge, do not interpret the provisions of the parties' collective-bargaining agreement pertaining to reappointments. We agree with the judge that this issue of contract interpretation is not before us.

We agree with the judge that the Respondent was generally forthcoming about information regarding faculty reappointments and that the parties had a misunderstanding about the scope of the Union's May 31 information request on that topic. Particularly in these circumstances, parties are more likely to obtain a satisfactory resolution of such misunderstandings through good-faith discussions between themselves rather than involving the Board through unfair labor practice litigation.

Tanya Khan, Esq., for the General Counsel.
Michael Bertoncini, Esq., for the Respondent.
Carl Levine, Esq., for the Charging Party.

DECISION

GEOFFREY CARTER, Administrative Law Judge. The General Counsel asserted in this case that Barnard College (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to provide information that UAW Local 2110 (the Union) requested concerning why Respondent did not reappoint certain contingent faculty members in 2017. As explained below, I find that Respondent did not violate the Act because it did provide a substantive response to the Union's information request, and to the extent that Respondent did not provide information that the Union desired, that failure resulted from a misunderstanding between the parties. Accordingly, I recommend that the complaint be dismissed.

STATEMENT OF THE CASE

This case was tried in New York, New York, on May 22, 2018, with the late Associate Chief Administrative Law Judge Mindy Landow presiding. On August 23, 2018, Deputy Chief Administrative Law Judge Arthur Amchan issued an order assigning this case to me, with the consent of all parties, to issue a decision based on the evidentiary record.

The Union filed the unfair labor practices charge in this case on June 13, 2017, and filed an amended charge on August 17, 2017.[1] Subsequently, the General Counsel issued a complaint on February 28, 2018.

In the complaint, the General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by, since on or about June 9, 2017, failing and refusing to provide the Union with information that the Union sought in a May 31, 2017 information request. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT[2]

I. JURISDICTION

Respondent, a New York not-for-profit corporation with an office and place of business in New York, New York, engages in the business of operating a private college. Annually, in the course of its business operations, Respondent: derives gross revenues available for operating expenses in excess of $1 million; and purchases and receives products, goods and materials at its New York, New York facility that are valued in excess of $50,000 and come directly from points outside the State of New

[1] All dates are in 2017, unless otherwise indicated.

[2] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

York. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

On October 13, 2015, the Board certified the Union as the exclusive collective-bargaining representative of Respondent's "contingent faculty" in the following appropriate unit:

> The following off-ladder officers of instruction who teach classes at Barnard College on a full or part-time basis: All Adjunct Assistant Professors, Adjunct Associate Professors, Adjunct Professors, Adjunct Associates, Adjunct Senior Associates, Adjunct Lecturers, Adjunct Visiting Assistant Professors, Adjunct Visiting Professors, Guest Artists, Laboratory Associates, Senior Activist Fellows, Senior Scholars, Distinguished Fellows, Anna Quindlen Writers in Residence, Distinguished Artists in Residence, Term Assistant Professors, Term Associate Professors, Term Professors, Term Assistant Professors of Professional Practice, and Term Senior Lecturers.[3]

(Jt. Exh. 1; see also Tr. 17–18, 45.) On April 7, 2017, Respondent and the Union executed their first collective-bargaining agreement, which took effect that same date and continues in effect until June 30, 2022. (Jt. Exh. 2 (p. 39); see also Tr. 17–18, 43, 45–46.)

B. Contingent Faculty Appointments

Under the collective-bargaining agreement, Respondent (through its Provost or another designee) appoints and assigns contingent faculty to teach courses via written agreements that Respondent issues on or before June 1. Contingent faculty appointments generally specify the length of the appointment in academic years. For more experienced contingent faculty, the appointment may also guarantee the number of classes that the faculty member will be assigned each academic year during the term of the appointment. (Jt. Exh. 2 (pp. 11–17).)

A variety of rules apply when Respondent considers whether to reappoint contingent faculty. In general, once a contingent faculty member completes his or her probationary period (the first four semesters of teaching at the college) and has taught at least seven semesters at the college over consecutive academic years, the collective-bargaining agreement indicates that Respondent must offer the contingent faculty member another appointment or a separation payment. (Jt. Exh. 2 (pp. 12–17).)

Under Article 11, Section 5 of the collective-bargaining agreement, "the College will give good faith consideration (as defined in Article 11, Section 6) to the appointment and assignment of a Unit Member to a course where the Unit Member has taught the same course, as defined by course number and/or other published course identifier, for seven (7) semesters within no more than seven (7) academic years." (Jt. Exh. 2 (p. 13).) Article 11, Section 6 of the collective-bargaining agreement states as follows:

> Section 6—Good faith consideration means the College may deny, reduce, or cancel an appointment or assignment of a Unit Member in the following circumstances:
>
> (a) Elimination or downsizing of an academic unit or program and/or merging of an academic unit or program within another academic unit or program which results in the elimination of a course taught by the Unit Member;
>
> (b) Creation of a full-time faculty position that absorbs an existing course taught by Unit Members or any other circumstances in which a course previously taught by a Unit Member will be taught by a full-time faculty member or non-bargaining unit member;
>
> (c) A reduction in the number of courses or sections offered in an academic term or the cancellation of a course or section as determined by the College in accordance with applicable policies and procedures as they may be amended by the College from time to time, which results in the elimination of a course taught by the Unit Member;
>
> (d) Elimination, decrease or modifications in the course offerings due to changes in core curriculum requirements, or major or minor program requirements, which impacts the course taught by the Unit Member;
>
> (e) Availability of another individual(s) with significantly more relevant credentials and experience;
>
> (f) Non-reappointment based on:
>
> 1. Unsatisfactory performance or conduct of a Unit Member;
>
> 2. The Unit Member's failure to meet any of the responsibilities set forth in Article 9 – Academic Freedom and Responsibility; and
>
> 3. Misconduct of a Unit Member that is outside the scope of their employment with the College which would adversely affect the Unit Member's ability to teach or be a member of the College community.
>
> Each appointment ceases at the end of the designated appointment period. Denials, reductions, or cancellations of appointments or assignments based on Article 11, Section 6 shall be subject to grievance and arbitration under Article 22. The sole issue subject to grievance or arbitration over the denial, reduction or cancellation of an appointment or assignment under Article 11, Section 6, 11(a)–(d) shall be whether the College established that the conditions set forth therein existed or occurred, and if they did not, the applicable remedy. The standard of review for a grievance or arbitration alleging a violation of

[3] Employees in the following positions were excluded from the bargaining unit: Assistant Professors of Professional Practice, Associate Professors of Professional Practice, Professors of Professional Practice, Associates, Lecturers, Senior Associates, Senior Lecturers, Post Doc Fellows, Post-Doctoral Research Associates, Graders, Teaching Assistants, Research Professors, Research Scholars, Research Scientists, guards, supervisors and managerial employees as defined in the National Labor Relations Act. (Jt. Exh. 1.)

> Article 11, Section 6, 11(e)–(f) shall be whether the College established by clear and convincing evidence that one of the conditions set forth in those sections has been met.

(Jt. Exh. 2 (pp. 17–18); see also Tr. 30.)

C. The May 31, 2017 Information Request

In late May 2017, the Union learned that Respondent would not be reappointing a contingent faculty member (hereafter referred to as CF1) to teach in Fall 2017. When the Union asked, by email, why Respondent was not offering CF1 an appointment after multiple years of teaching, Respondent explained that it based its decision on student evaluations and the reduced number of class sections that would be available due to the arrival of three new full-time lecturers who would be teaching the same subject matter as CF1.[4] (CP Exh. 1; see also Tr. 28–29, 32, 39–40, 67–68.)

In the same time period (late May), the Union learned that Respondent planned to offer separation payments to, and not reappoint, approximately seven contingent faculty members who had substantial experience teaching at the college. In light of that development, the Union wished to gain a better understanding of Respondent's reasons for not reappointing certain contingent faculty, and take steps to ensure that Respondent was treating contingent faculty fairly. (Tr. 18–19, 33, 42–43, 47.) Accordingly, on May 31, 2017, the Union emailed Respondent about separation payments and the non-reappointment of bargaining unit members. The Union stated as follows in its email:

> We write with respect to the recent non-reappointments of our members. Although the collective bargaining agreement provides that certain non-reappointed members of the bargaining unit are entitled to separation payments "after executing a release of claims against the College," the parties have not discussed the specific form of this release or the timing for its execution. We hereby [ask] for a meeting to negotiate over these issues.
>
> In addition to the release of claims language contained in the separation letters, we also want to discuss the non-reappointment of individual bargaining unit members. As you have indicated that you may notify us this week about additional individuals who will not be re-appointed, we therefore propose that this meeting take place after the list is final. June 9 or June 13 would work for the union.
>
> As to the specific cases of non-reappointment, at this point, in almost all cases, you have not provided either the union or the individuals themselves with any substantive information about why the College is not reappointing them. Please provide for each individual not re-appointed, the reason(s) pursuant to Article 11, Section 6 and all pertinent facts substantiating the decision not to reappoint. For example, if the College claims that the individual will not be re-appointed pursuant to 11, 6(b), provide the name, title, and classification of the individual who will teach the course, and when they will teach it.
>
> Several of the affected members are long-term employees of the College. They were called to meetings whose purpose was not made clear in advance, without union representation. In at least three instances that we know of, there were three management representatives present to inform the member – who had no advocate present – of the College's decision. The union was not informed in advance of the meetings although we requested this information several weeks ago. On the contrary, you said you would not provide the information to us about who would be affected in advance of the contract deadline for reappointment.
>
> Under the circumstances, both those specifically concerning the individual members being non-reappointed, and the fact that the parties have not had an opportunity to discuss the terms of the release, the twenty-one day deadline you are imposing for these members to make such a momentous decision about their lives is unfair. The deadline will preclude the union from fully reviewing each case and intelligently advising our members about their options. We therefore propose that the parties agree to hold in abeyance any deadline for either filing a grievance concerning non-reappointment, or signing the separation agreement, until the parties have had an opportunity to negotiate over the form of the release, and until you provide us with information about the non-reappointments and we have had a fair opportunity to meet and discuss this matter.
> Please let us know if you are available to meet and will agree to our proposal on the deadlines.

(Jt. Exh. 3; see also Tr. 18–19, 46–47.)

D. Early June 2017 – Communications about the May 31 Information Request, Nonreappointment of Contingent Faculty, and Separation Payments

On June 2, 2017, Respondent (through Deputy General Counsel Andrea Stagg) emailed the Union, and stated as follows regarding the non-reappointments of contingent faculty:

> I am in receipt of your May 31 request to meet and bargain about non-reappointments. I am reviewing it, and I will have a response for you and will offer times to meet on those issues based on our availability. As you know, appointment letters went out yesterday, and as I am sure you understand, it was a great task. . . .

(Jt. Exh. 4; see also Tr. 19, 49.)

On June 5, 2017, the Union sent Respondent a followup email about contingent faculty reappointments, stating:

> We have not received copies of appointment letters for certain individuals who taught in 2016–2017, nor have you notified us about their non-reappointment. Please provide information concerning the status of each of the individuals listed below,

[4] On June 5, 2017, the Union filed a grievance concerning CF1. In connection with that grievance, the Union submitted an information request to Respondent on June 6, 2017. Respondent provided an initial, partial response to the June 6 request on June 12, 2017, and provided additional information on August 16 and September 13, 2017. (GC Exh. 2; Tr. 23–28, 62–67, 73.) Neither the grievance concerning CF1 nor any disputes about June 6, 2017 information request are before me in this case. The parties' interactions concerning those matters, however, do provide some relevant background and context for this case and the dispute about the May 31, 2017 information request.

> including whether they are being reappointed, have resigned from the College, are probationary, or are on leave from the College. If they are being reappointed, please provide a copy of the appointment letter. If they are being let go as a probationary employee, please confirm prior semesters that they taught. If they are on leave, please provide the dates and reason for the leave. If they are not being reappointed, please include them in the information request we made previously.
>
> [Attached list of 79 faculty members in various departments.]

(Jt. Exh. 5; see also Tr. 33–34, 49–50 (noting that both the Union and Respondent had questions about whether some of the 79 faculty members that the Union listed were still part of the contingent faculty bargaining unit).)

In an email dated June 7, 2017, the Union asked Respondent to suspend the 21–day deadline for non reappointed contingent faculty to sign releases and accept separation pay. In support of that request, the Union pointed out that: the parties had not yet scheduled a date to meet and bargain about the releases and related issues; and the Union had not yet received the information that it requested. The Union also asked Respondent to provide the date of birth for all individuals who taught in bargaining unit positions in the 2016–2017 academic year. (Jt. Exh. 6; see also Tr. 20, 50.)

Later on June 7, Respondent agreed to "hold the 21–day deadline in abeyance pending our discussion of the form of the release" (though individuals could choose to sign the release earlier if they wished), and provided documentation that identified the dates of birth for bargaining unit members in fall 2016 and spring 2017. Respondent added:

> We do not agree with your representation of the role of good faith consideration in these offers of separation pay, and offer the following additional dates to meet and discuss this and other issues such as the form of the release: 6/13, 6/22, 6/23.
>
> As you know, by June 1 we sent letters to individuals who were owed notice of either their appointment or offer of separation pay. We are reviewing the list you sent on June 5, and we request that we discuss it in person on Friday [June 9, 2017] – we do not know how you generated this list, but it includes individuals who are full time faculty who are not in the unit, people who are pre-probationary, and even a currently active term professor. . . .

(Jt. Exh. 7; see also Tr. 20–22, 34–35, 42, 50–53, 71–72.) The Union did not modify its May 31 information request based on Respondent's June 7 email. (Tr. 37–39.)

E. June 9, 2017—Meeting to Discuss Nonreappointment of Contingent Faculty (and Related Issues)

On June 9, 2017, the Union and Respondent met to discuss issues relating to contingent faculty who would not be reappointed for the next academic year. Early in the meeting, Respondent asked the Union how it compiled the list of faculty that it inquired about on July 5, since that list included faculty who were not part of the bargaining unit. The Union explained that it compiled the list from its database and was aware that some faculty on the list were no longer in the bargaining unit but wanted to be sure that no one slipped through the cracks as the parties discussed appointments and separation pay. The parties agreed to get together to compare lists and make sure that they were on the same page as to who was in the bargaining unit. (Tr. 22, 53–55.)

Later in the meeting, Union President Maida Rosenstein commented about "good-faith consideration" in the non reappointment of faculty in the urban studies department. On behalf of Respondent, Stagg replied that the parties had a fundamental misunderstanding of the role of good-faith consideration. Specifically, Stagg explained that Respondent believed that the good-faith consideration standard (from Article 11, Section 6 of the collective-bargaining agreement) only applied to whether faculty members should get a preference for being assigned to a particular course. Stagg asserted that the good-faith consideration standard did not apply to whether contingent faculty should be reappointed – instead, department chairs at the college made reappointment decisions.[5] (Tr. 55–57; see also Tr. 62 (explaining that department chairs have the discretion to decide whether to reappoint contingent faculty).)

It did not occur to the Union to advise Respondent that irrespective of the language in the collective-bargaining agreement (including the language in Article 11, Section 6), the Union wanted Respondent to provide its reasons for not reappointing experienced contingent faculty members. (Tr. 38–39.) Respondent, meanwhile, left the June 9 meeting believing that it answered the questions that the Union posed in the Union's May 31, 2017 information request. (Tr. 57, 69.)

F. Mid–June 2017—Additional Communications Contingent Faculty Appointments

Shortly after noon on June 16, 2017, the Union emailed Respondent to obtain additional information. Specifically, the Union stated:

> We reiterate our prior 5/31 and 6/6 requests for information and request the following additional information:
>
> [Additional evaluations for CF1]
>
> [Documents concerning reorganization, restructuring or changes in staffing in the urban studies department]
>
> [A list of all faculty scheduled to teach in the urban studies department for academic year 2017–2018]
>
> Please provide this information by Wednesday, June 21st or earlier. If you can provide some items sooner than others, please provide the information piecemeal.

(Jt. Exh. 8; see also Tr. 22–23, 69–70.)

At 5:01 p.m. on June 16, Respondent (through Stagg) replied to the Union's email, stating as follows:

> I am in receipt of your request. I am likely going to request an extension, though I need to consult with other offices about the existence and scope of responsive documents, and seek to do

[5] Stagg's testimony about the parties' discussion in the June 9 meeting is essentially unrebutted. Rosenstein agreed that the parties met on June 9, but could not recall any specifics about the content of the parties' discussion during the meeting. (See Tr. 22, 35.)

> that before June 21 so I can anticipate if and how much time we will require. . . .

(Jt. Exh. 9; see also Tr. 23, 75–77.)

> At 5:14 p.m. on June 16, Stagg emailed the Union again, specifically to provide information in response to the Union's June 5 email concerning faculty reappointments. Stagg advised the Union as follows:
>
> > As discussed last week, we went through your list that you sent on [June 5] and found that there are individuals who are tenured faculty, people who took jobs elsewhere, people who were mid-term appt, recently received or [were] offered term appointments, and then individuals who were not offered appointment as of June 1.
> >
> > Attached is what we found about the individuals on your list. Happy to discuss further, going through the names, as we discussed last week.
> >
> > [Attached list showing the name of each faculty member from the Union's June 5 list, the department, and a short notation about the faculty member's status (e.g., probationary employee, post-probationary employee, full-time tenured faculty, did not teach in the previous academic year).]

(Jt. Exh. 10; see also Tr. 35–36, 50, 57–60.) When it became apparent (through brief emails between the parties on June 21 and 22) that the Union missed Respondent's email and faculty list from June 16, Respondent re-sent its June 16 email and list. Respondent also provided the Union with a copy of the faculty list in PDF format when the Union reported difficulty opening the list in Excel format. (Jt. Exh. 11; see also Tr. 37, 41.)

On June 22 and 23, 2017, the Union and Respondent met to discuss nonreappointments of contingent faculty. The parties discussed a variety of issues, including but not limited to the possibility of submitting CF1's grievance to arbitration, and modifying the separation package that Respondent offered to a member of the bargaining unit. The parties did not discuss the May 31 information request during the June 22 and 23 meetings. (Tr. 60–61, 70.)

Applicable Legal Standards

A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB at 860. To the extent that I have made them, my credibility findings are set forth above in the findings of fact for this decision.

B. 8(a)(5) Allegations

An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiations and administration. Generally, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. By contrast, information concerning extra-unit employees is not presumptively relevant, and thus relevance must be shown. The burden to show relevance, however, is not exceptionally heavy, as the Board uses a broad, discovery-type standard in determining relevance in information requests. *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011). When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or adequately explain why the information will not be furnished. *Regency Service Carts*, 345 NLRB 671, 673 (2005).

Discussion and Analysis

Did Respondent Violate the Act by Failing and Refusing to Provide Information in Response to the Union's May 31, 2017 Information Request?

1. Complaint allegation

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by, since on or about June 9, 2017, failing and refusing to provide the Union with information that the Union requested about the reason(s) under Article 11, Section 6 of the collective-bargaining agreement for why certain contingent faculty members were not reappointed. (GC Exh. 1(e) (pars. 8–9).)

2. Analysis

The evidentiary record shows that on May 31, 2017, the Union asked Respondent to "provide for each individual not re-appointed, the reason(s) pursuant to Article 11, Section 6 and all pertinent facts substantiating the decision not to reappoint." To clarify the nature of its request, the Union provided the following example: "if the College claims that the individual will not be reappointed pursuant to 11, 6(b), provide the name, title, and classification of the individual who will teach the course, and when they will teach it." There is no dispute that the Union submitted this information request in an effort to gain a better understanding of Respondent's reasons for not reappointing certain contingent faculty, and to take steps, as appropriate, to ensure that Respondent was treating contingent faculty fairly. (Findings of Fact (FOF), Section II(C); see also FOF, Section II(B) (quoting Article 11, Sections 5–6 of the collective-bargaining agreement, which define the parameters of good faith consideration).)

The evidentiary record also shows that Respondent provided substantive responses to the Union's May 31, 2017 information request on June 7 and 9, 2017. First, on June 7, Respondent emailed the Union and advised that it did not agree with the Union's assertion that the good faith consideration standard from Article 11, Section 6 of the collective-bargaining agreement had a role in Respondent's decisions to offer separation pay (instead

of a reappointment) to certain contingent faculty. Respondent offered to meet with the Union to discuss the issue further. Second, in a face to face meeting on June 9, Respondent explained that it believed that the good-faith consideration standard only applied to whether faculty members should get a preference for being assigned to a particular course and did not apply to whether contingent faculty should be reappointed. Respondent added that its department chairs were the ones who made reappointment decisions for contingent faculty. (FOF, Section II(D)–(E).)

The Union reiterated its May 31 information request on June 16. There is no evidence, however, that the Union ever modified its May 31 information request in light of the information that Respondent provided on June 7 and 9 (e.g., by asking why certain faculty were not reappointed, irrespective of the good faith consideration standard in the collective-bargaining agreement). Similarly, although the Union and Respondent worked together in mid-June to identify the employment status of 79 faculty members, there is no evidence that the Union used those communications as a springboard to ask why Respondent did not reappoint certain contingent faculty. (FOF, Section II(D), (F).)

As a preliminary step, it is important to clarify what is in dispute in this case. There is no dispute about whether the Union sought relevant information in its May 31, 2017 information request. Indeed, Respondent does not predicate its defense in this case on issues of relevance. Instead, Respondent maintains that the Union asked a specific question in its May 31 information request about why Respondent did not reappoint certain contingent faculty under Article 11, Section 6, and Respondent answered that question by explaining that the Article 11, Section 6 did not play a role in reappointment decisions.[6] In response, the General Counsel and Union maintain that Respondent should have simply provided the reasons why it did not reappoint certain contingent faculty members, because that broader question was at the core of the Union's information request.

After considering all of the evidence, I cannot find that the General Counsel demonstrated, by a preponderance of the evidence, that Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint. First, I agree with Respondent that the Union asked Respondent to provide its reasons, under Article 11, Section 6 of the collective-bargaining agreement, for not reappointing certain contingent faculty members. Respondent answered that question on June 7 and 9, when it explained its position that Article 11, Section 6 did not apply to faculty reappointment decisions. To the extent that the Union, on June 16, reiterated the same information request after receiving Respondent's explanation, the Union essentially repeated a question that Respondent answered the week before.

Second, the overall context of the parties' communications about the information request and contingent faculty reappointments favors Respondent. This is not a case where Respondent flatly refused to provide relevant information to the Union.[7] To the contrary, Respondent was generally forthcoming with information about reappointments, as it (among other things): provided the rationale for CF1 not being reappointed when the Union requested it;[8] met with the Union to discuss various issues concerning reappointments and separation payments; and worked with the Union to clarify the employment status of 79 employees that the Union identified.

Third, I am not persuaded by the General Counsel's and Union's argument that Respondent should have interpreted the May 31 information request more broadly—i.e., as a general request for the reasons why certain contingent faculty members were not reappointed (instead of a request for the reasons under Article 11, Section 6 of the collective-bargaining agreement). Perhaps, as the General Counsel and Union maintain, Respondent could have interpreted the information request more broadly based on the Union's request for "all pertinent facts substantiating the decision not to reappoint," but Respondent's more narrow interpretation was understandable given the references in the information request to Article 11, Section 6. And, as Respondent points out, perhaps the Union could have modified or broadened its information request after Respondent asserted that Article 11, Section 6 did not apply to faculty reappointment decisions, or after the parties completed the process of clarifying the employment status of the 79 faculty members that the Union identified on June 5, 2017. The parties, of course, did not take any of those steps. In any event, given that Respondent and the Union generally were communicating and exchanging information about various issues concerning contingent faculty reappointments, it is apparent that the parties had a misunderstanding in their communications about the scope of the Union's May 31 information request. Based on the facts before me, I am not inclined to rely on that misunderstanding as the basis for finding that Respondent violated Section 8(a)(5) and (1) of the Act with its handling of the Union's May 31 information request. See *LTD Ceramics*, 341 NLRB 86, 87–88 (2004) (finding that the employer did not

[6] The question of whether Respondent was correct in how it interpreted the scope of Article 11, Section 6 of the collective-bargaining agreement is not before me in this case. Indeed, the parties have elected to go to arbitration to resolve that question. (See Tr. 10, 12.) This case only raises the question of whether Respondent violated Section 8(a)(5) and (1) of the Act while handling the Union's May 31, 2017 information request.

[7] For this reason, the Board's decision in *United-Carr Tennessee* (cited by the General Counsel) is inapposite. In *United-Carr Tennessee*, the employer refused to provide job performance evaluation records and standards in response to an information request from the union. The employer refused to provide the information because, relying on its own interpretation of the contract, it determined that the information was not relevant to the Union's duty to determine whether to take a grievance to arbitration. 202 NLRB 729, 729, 731–732 (1973).

Respondent did not take such a position here concerning the Union's role of protecting the interests of contingent faculty in the reappointment process. To the contrary, Respondent did provide the Union with information about contingent faculty reappointments but explained that the Union's May 31 information request was off-base because (in Respondent's view) the request incorrectly presumed that Respondent used the framework in Article 11, Section 6 of the collective-bargaining agreement when Respondent decided not to reappoint certain contingent faculty members.

[8] In contrast to the May 31 information request, the Union did not reference Article 11, Section 6 of the collective-bargaining agreement when it asked Respondent why CF1 was not reappointed. (See FOF, Sec. II(C).) As a result, the Union's information request concerning CF1 did not raise any questions about whether Respondent used the framework from Art. 11, Sec. 6 to decide whether to reappoint CF1.

refuse to provide information in violation of the Act, in part because the employer provided some information in response to the Union's request, and any misunderstanding about what additional information the Union still wanted could have been resolved by further communication between the parties), petition for review denied, 185 Fed. Appx. 581 (9th Cir. 2006); *Reebie Storage & Moving Co.*, 313 NLRB 510, 513 (1993) (same, where the employer responded in good faith to the Union's requests and did nothing to foreclose or discourage the Union from pursuing its interests more actively), enf. denied on other grounds, 44 F.3d 605 (7th Cir. 1995). Accordingly, for the reasons set forth herein, I recommend that the complaint (and the allegations therein) be dismissed.

CONCLUSIONS OF LAW

1. Respondent Barnard College is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Charging Party UAW Local 2110 is a labor organization within the meaning of Section 2(5) of the Act, and represents Respondent's contingent faculty in the following appropriate bargaining unit:

> The following off-ladder officers of instruction who teach classes at Barnard College on a full or part-time basis: All Adjunct Assistant Professors, Adjunct Associate Professors, Adjunct Professors, Adjunct Associates, Adjunct Senior Associates, Adjunct Lecturers, Adjunct Visiting Assistant Professors, Adjunct Visiting Professors, Guest Artists, Laboratory Associates, Senior Activist Fellows, Senior Scholars, Distinguished Fellows, Anna Quindlen Writers in Residence, Distinguished Artists in Residence, Term Assistant Professors, Term Associate Professors, Term Professors, Term Assistant Professors of Professional Practice, and Term Senior Lecturers.

3. The General Counsel failed to prove that Respondent violated Section 8(a)(5) and (1) of the Act by, since on or about June 9, 2017, failing and refusing to provide the Union with information that the Union requested about the reason(s) under Article 11, Section 6 of the collective-bargaining agreement for why certain contingent faculty members were not reappointed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. September 14, 2018

[9] 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.