

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

FCA US LLC

Respondent

and

**Cases 07-CA-219895
07-CA-221914**

**LOCAL 723, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO**

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

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Counsel for the General Counsel Eric S. Cockrell respectfully submits this brief¹ to Administrative Law Judge (ALJ) Melissa A. Olivero, who heard this case on February 7 and 8, 2019.

ISSUES PRESENTED

1. From about February 20, 2018 to May 24, 2018, did Respondent unreasonably delay in furnishing the Charging Party with the requested team member interview forms related to the removal of Unit employee Robert Watts Jr. as a team leader, in violation of Section 8(a)(1) and (5) of the Act?
2. Since about April 17, 2018, has Respondent unlawfully failed and refused to provide the Charging Party with all of the information in Item #3: a copy of taxi “pulls” for Unit employee Kelli Newkirt for the last two years two weeks, in violation of Section 8(a)(1) and (5) of the Act?
3. Since about April 17, 2018, has Respondent unlawfully failed and refused to provide the Charging Party with any of the information in Item #4: a copy of Taxi “pulls” of the entire taxi team on 2nd shift for the last two weeks, in violation of Section 8(a)(1) and (5) of the Act?
4. Since about April 17, 2018, has Respondent unlawfully failed and refused to provide the Charging Party with any of the information in Item #5: production numbers each day of full production for the last two weeks, in violation of Section 8(a)(1) and (5) of the Act?
5. Since about April 17, 2018, has Respondent unlawfully failed and refused to provide the Charging Party with any of the information in Item #6: a list of all individuals disciplined for violations of Standard of Conduct (SOC) sections #3, #5, #6, #11, and #14 in the past two years for salary employees, in violation of Section 8(a)(1) and (5) of the Act?

¹ References to the record will appear as follows: (Tr ___) refers to a specific page of the trial transcript. (GC ___), (R ___), and (Jt ___) refer to General Counsel, Respondent, and Joint exhibits, respectively.

6. Since about April 17, 2018, has Respondent unlawfully failed and refused to provide the Charging Party with Item #7: a list of all disciplines served for SOC violations of Section #3, #5, #6, and #11 in the past two years for salary employees, in violation of Section 8(a)(1) and (5) of the Act?
7. From about June 26, 2018 to November 2, 2018, has Respondent unreasonably delayed in furnishing the Charging Party with the information requested by the Charging Party, including Unit employee Chris Wilson's FMLA interview statement, in violation of Section 8(a)(1) and (5) of the Act?

Counsel for the General Counsel states that the questions should be answered in the affirmative.

STATEMENT OF FACTS

I. Background.

The Charging Party is the designated servicing representative of the International Union, UAW with respect to about 600 employees who work at Respondent's Dundee Engine Plant, Dundee, Michigan (Dundee). (Tr. 22-23, 177-181; Jt 1, p 5; R 1; GC 1(g), par. 5(a) – 5(d); GC 1(i), par. 5(a) – 5(d); GC 1(j), par 5(a) – 5(d); GC 13; R 2). From about June 2014 until May 2017, Mark Willingham was the Alternate Union Steward at Dundee where he was responsible for representing about 250 Unit Employees. (Tr 24). Since May 17, 2017, Willingham has been the Chief Union Steward at Dundee on Respondent's 2nd shift, which runs from 5:00 p.m. to 3:30 p.m. (Tr 23-24). In his current capacity as Chief Union Steward, Willingham is responsible for representing about 200 Unit

employees, including the enforcement of the parties' collective-bargaining agreement, such as the processing of grievances. (Tr 24-25; GC 13; Jt 1; R 1, R3).

The Charging Party's bargaining committee consists of Willingham, Unit/Shop Chairman Lorenzo Jamison Sr., and Production Committeeman Eric Jackson. (Tr 45, 146, 158). Willingham handles grievances at Step 1 of the contractual grievance-arbitration procedure, Jackson conducts grievances at Step 2, and Jamison processes grievances at Step 3. (Tr 45, 146, 158; Jt 1; G 13; R1, R 3). Jamison is the highest ranking Charging Party Official at Dundee, and as a result of such capacity, he receives a courtesy copy of all emails exchanged between the Charging Party and Respondent concerning information requests. (Tr 146, 147-148, 149).

II. Since about February 20, 2018, the Charging Party requested, in writing, that Respondent furnish the Charging Party with team member interviews related to the removal of Robert Watts Jr. as a team leader.

A. The Charging Party's rationale for requesting information from Respondent beginning on February 20, 2018.

On February 20, 2018², Chief Union Steward Willingham prepared and filed Grievance Nos. 18-0029 and 18-0030 on behalf of Unit employee Robert Watts Jr., who works in Department 9100 or North Assembly, at Dundee, within Willingham's jurisdiction. (Tr. 32, 33, 217; GC 2, 3; R 14, R 15). Watts was removed as team leader on the grounds that he failed to perform his duties, and the Charging Party maintains that Respondent's Supervisor Tony Nahas Jr.,

² All dates here are 2018 unless otherwise stated.

harassed, retaliated, and improperly removed Watts from such position. (Tr 34, 149; GC 2, 3, 4, 13).

Also, the Charging Party filed grievances in response to Watts' removal asserting Respondent discriminated against him because of his race and color under "Title VII of the Civil Rights Act of 1964, as amended", which matters are subjects of the parties' "Equal Application of Agreement" contract language. (Tr 37-39; GC 2, 3, 4, and 13; Jt 1,).

The Charging Party filed Grievance No. 18-0029 on the grounds that Respondent created a hostile work environment by harassing and retaliating against Watts, in violation of the "Chrysler Group LLC Policy" Number 3 – 6. (Tr. 33, 34; GC 2, 16). Also, within Grievance No. 18-0029, Willingham specifically stated the Charging Party's position that Respondent's conduct toward Watts violated the "FCA US LLC STANDARDS OF CONDUCT" (Standards of Conduct or SOC); the parties' "Letters, Memoranda and Agreements 2015 Production, Maintenance and Parts Agreement between FCA US LLC and the UAW", including Letter 117 "Discrimination and Harassment Prevention", page 104; and the "FCA FIAT CHYRSLER AUTOMOBILES CODE OF CONDUCT". (Tr 33-34, 46; GC 12, 13, 15). Labor Representative Eliza Jane Lanway received Grievance No. 18-0029. (Tr 34-35, 252; GC 2).

The Charging Party filed Grievance No. 18-0030 on the grounds that Respondent's removal of Watts from the Team Leader violated Letter No. 255, the "Team Member / Team Leader Classification" on pp. 216-218 of the "Letters,

Memoranda and Agreements 2015 Production, Maintenance and Parts Agreement between FCA US LLC and the UAW. (Tr 35, GC 3, 13). Also, Willingham specifically made reference to the “Joint Team Leader Selection Training and Procedure Manual Team-Based Manufacturing”. (Tr 35, 46-47, 214-215, 216; GC 3, 14, pp. 3-5). The Joint Team Leader Selection Committee consists of two representatives from each of the Charging Party and Respondent. (Tr 206). Respondent is responsible for the investigation of a team member’s potential removal from the team leader position. (Tr 206, 207-208). Labor Representative Lanway received Grievance No. 18-0030. (Tr 35-35; GC 3).

B. The Charging Party’s information request of February 20, 2018.

On February 20, by email, at 4:10 p.m., Willingham requested, in part, that Respondent provide a copy of all team member interview forms that pertain to Respondent’s removal of Watts as team leader. (Tr 44, 62, 149, 209; GC 6, 1st page). By email, Willingham submitted the information request to Labor Relations Supervisor Nick Weber, along with a copy to each of Human Resources Manager Bob Daragon, 2nd Shift Supervisor Lugina Roberts, 2nd Shift Supervisor Tony Nahas Jr., and Human Resources Generalist Joanna Carr, Unit/Shop Chairman Jamison Sr., and Production Committeeman Jackson, on the grounds that Watts might have been improperly removed Watts from a team leader position. (Tr 44-46, 160, 238; GC 6; GC 12, paragraphs 1 and 8, pp. 1-2).

On March 2, by email, Weber provided Willingham, with other requested information that is not the subject of the instant Consolidated Complaint, along

with two screenshots consisting of two of the requested team member interview forms, which are the subject of the instant information request. (Tr 53, 54, 210; GC 1 and 6).

On March 4, by email, at 4:22 p.m., with Items 3 and 4 of the Charging Party's February 20, 2018 information request, Willingham renewed the Charging Party's request that Weber provide the Charging Party with a copy of both all team leaders that were removed at Dundee and team leader removals that were requested at the same location, including any and all information of team leaders that were ever removed as team leader and any and all requests for team leader removals at Dundee under all Joint Team Leader Selection Committees. (GC 6). Willingham requested the information by March 8. (GC 6).

On March 4, by email, at 4:38 p.m., Willingham also requested information on how the team members were selected for the team leader removal of Watts. (GC 6). Specifically, Willingham inquires how did Alena Watson, Patrick Porier, Nick Weber, and Matthew Shipley decide which team members to interview for Watts' removal process. (GC 6). Willingham stated that several team members were omitted from the process, and inquires why certain team members were chosen and not others according to Watson, Porier, Weber, and Shipley. (GC 6, 5th page). Willingham requests that such information be furnished by March 8. (GC 6).

On March 4, by email, at 5:16 p.m., Willingham notified Weber that Respondent had not provided all of the requested interview forms pertaining to

Watts, and renewed the Charging Party's request that such information be provided by March 8. (Tr 55, 211; GC 1, 6, 14).

On March 5, by email, at 8:33 a.m., Weber referred Willingham to pages 13 and 14 of the request for information package, including the two team member interview forms provided on March 2. (Tr 55, 211; GC 1, 6, 14).

On March 7, by email, at 3:39 p.m., Weber stated to Willingham that, "The members were selected randomly from the list of team member names in that zone." (Tr 55-56; GC 6). At that time, Willingham believed that Respondent had not provided all of the requested team member interview forms related to Watts' removal as a Team Leader because a total of 8 team members worked in Watt's work zone during the time frame covered by the Charging Party's information request. (Tr 56, 61, 150-151; GC 1).

Sometime during a routine meeting in May, on behalf of the Charging Party, Unit/Shop Chairman Jamison and Production Committeeman Jackson met with Daragon in the Human Resources Department. (Tr 150, 151, 160, 212-213). There was discussion about the Charging Party's pending information request regarding Watts. (Tr 150, 160; GC 1). Jamison and Jackson stated that they believed that there were more people that Respondent interviewed than the two provided because as many as 8 people were present in Watts' work zone. (Tr 149, 150, 212; GC 1). At that time, Daragon called Weber into the meeting and told Weber to "give" the "rest of the information" to the Charging Party. (Tr 150, 151-152, 241). Weber agreed to comply. (Tr 152, 241).

About May 21, Willingham's suspicions were confirmed by Shop/Unit Chairman Jamison that Weber had not provided Willingham with all of the requested team member interview forms. (Tr 56, 212; GC 1, 6).

Around May 24, Willingham initiated a meeting in Daragon's office. (Tr 57, 240-241). Daragon called Weber in to participate in the meeting. (Tr 57, 241).

Willingham again requested the remaining team member interview forms pertaining to Respondent's removal of Watts as a team leader. (Tr 57).

Willingham asked, "Why didn't I receive all the forms when I first asked?" (Tr 57, 58). Daragon replied by saying that "it was a mistake". (Tr 54, 58, 172, 212-213).

Weber said that "he [Weber] didn't see it as being important." (Tr 54, 58).

Daragon told Willingham that Respondent would supply the requested team member interview forms. (Tr 58; GC 6). By email on either the same or next day, Weber provided Willingham with remaining 6 remaining requested team member interview forms pertaining to Watts. (GC 161).

About November 19, Shop/Unit Chairman Jamison withdrew Watts' team leader removal Grievance Nos. 18-0029 and 18-0030 without prejudice because the matter was settled by the Charging Party and Respondent at Step 3 of the grievance-arbitration procedure. (Tr 59-60, 154, 218, 219; GC 2-3, 5; R 17; Jt 1, Sec. 26, p. 29).

III. The Charging Party's information request, in writing, of about April 17, 2018 that Respondent furnish the Charging Party with: (A) Item #3 A copy of taxi "pulls" for Kelli Newkirt for the last two weeks; (B) Item #4 a copy of taxi "pulls" of the entire taxi team on 2nd shift for the last two weeks; (C) Item #5 production numbers each day of full production for the last two weeks; (D) Item #6 a list of all individuals disciplined for violations of Standards of Conduct (SOC) Sections #3, #5, #6, #11, and #14 in the past two years for salary employees; and (E) Item #7 a list of all disciplines served for SOC violations Sections #3, #5, #6, #11 in the past two years for salary employees.

A. The Charging Party's rationale for requesting information beginning on April 17, 2018.

On April 16, Respondent issued a three-day disciplinary layoff to bargaining Unit employee Kelli Newkirt who works in the Material Handling Department on the 2nd Shift, and she is represented by Chief Union Steward Willingham. (Tr 64, 65, 66-67, 181-182, 70; GC 7; R 2). Respondent charged that Newkirt violated the "FCA US LLC STANDARDS OF CONDUCT" Nos. 3, 5, and 6. (Tr 77; GC 7, 12, p. 1). Also, the Charging Party maintained that Respondent's conduct toward Newkirt violated Section 39, Maintenance of Discipline on page 39 of the "PRODUCTION, MAINTENANCE AND PARTS" Agreement between Respondent and the UAW, along with "any other relevant language, law, practice or policy that may apply". (Tr 72, 183, 184, 225; Jt 1, p. 39; R 3, p. 39; GC 8).

On April 16, along with Alternate Union Steward Nico Burgess, Willingham submitted Grievance No. 18-0064 regarding Newkirt's discipline to Respondent. (Tr 67-68, 198, 225; GC 8). The Charging Party maintained that

Respondent falsely disciplined Newkirt, behaved in an aggressive manner toward Newkirt and created a hostile environment. (GC 8).

On April 17, by email, Willingham submitted an information request to Respondent, including Area Manager Chris Lewis, Supervisor Eric Wasielewski, Supervisor Josh Deshuk, Labor Relations Supervisor Weber, Manager Julie Boik, Manager Kevin J. Anderson, Supervisor Tony Nahas Jr., Supervisor Lugina Roberts, and Supervisor Christopher Poole. (Tr 74-75, 184-185; GC 1, 9; R 4).

1. Item #3: Copy of taxi "pulls" for Kelli Newkirt for the last two weeks and Item #4: Copy of taxi "pulls" of the entire taxi team on 2nd shift for the last two weeks.

Taxi "pulls" are performed by employees within the Material Handling Department, including but not limited to Newkirt. (Tr 64). Employees within the Material Handling Department receive a call to deliver certain parts to the assembly line. (Tr 77, 189). The "call" or the item delivered by a Material Handler is referred to as a "pull". (Tr 77).

2. Item #5: Production numbers each day of full production for the last two weeks. Item #6: A list of all individuals disciplined for violations of SOC Sections #3, #5, #6, #11, and #14 in the past two years for salary employees. Item #7: A list of all disciplines served for SOC violations of Sections #3, #5, #6, and #11 in the past two years for salary employees.

The Charging Party requested a list of all individuals disciplined for violations of SOC Sections #3, #5, #6, #11 and #14 to determine whether Respondent engaged in disparate treatment involving Unit and non-Unit

employees who might have engaged in the asserted conduct. (Tr 79-80; GC 1, 12, Nos. 3, 5, 6, 11 and 14).

B. The Charging Party's information request beginning about April 17, 2018.

On April 17, by email, at 3:10 p.m., the Charging Party requested that Respondent provide the following information that is the subject of the Charging Party's Item #3, #4, #5, #6 and #7 of the April 17, 2018 information request. (Tr 73-75, 81, 101; GC 9; 1(g), par. 7; 1(l)).

After not having received a response from Respondent, Willingham, by e-mail, sent a second email inquiry to Chris Lewis, on April 23, 2018, at 3:56 p.m. (Tr 81-82; GC 9, 2nd page). Willingham re-stated his request to provide the requested information by April 27. (Tr 82; GC 9).

On April 23, at 4:41 p.m., by email, Weber replied to Willingham and agreed to provide the information on April 24, 2018. (Tr 83, 187-188; GC 9, 2nd page). On April 24, 2018, at 8:51 a.m., Respondent e-mailed the Charging Party but did not provide Willingham with the information that is the subject of Item #3, #4, #5, and Item #6. (Tr 83-85; GC 9). With respect to Item #7, a list of all individuals served for SOC violation Sections #3, #5, #6, #11 in the past two years for salary employees, Weber stated that Respondent did not see the relevance of information pertaining to non-Unit employees. (Tr 85-86; GC 1).

On April 24, at 8:50 a.m. and 8:51 a.m., by email, Weber furnished Willingham with Respondent's Standards of Conduct, the discipline served upon

Unit employees under SOC paragraphs #3, #5, #6, and correspondence that led to Respondent's decision-making and discipline. (Tr 83-84, 186; GC 9, 3rd page; R 5). This Respondent submission satisfied the Charging Party's request for information pertaining to Unit employees. (Tr 85). Weber did not provide the following information requested on April 17, 2018, at 3:10 p.m. by the Charging Party, which is the subject of Item #3: a copy of taxi "pulls" for Newkirt for the last two weeks; Item #4: a copy of taxi "pulls" of the entire taxi team on 2nd shift for the last two weeks; Item #5: production numbers each day of full production for the last two weeks; Item #6: a list of individuals disciplined for violation of SOC Section #3, #5, #6, #11 and #14; and Item #7: a list of all disciplines served for SOC violation of Section #3, #5, #6 and #11 in the past two years for salary employees. (Tr 84-85; GC 1, 9, 3rd page; R 5). With respect to requested Items #6 and #7, Weber referred Willingham to Respondent's attachment containing a list of Unit employees and further stated that Respondent "does not understand" nor "see the relevance of non-bargaining Unit employees." (Tr 85, 186-187; GC 1, 9; R 5).

In response and in order to clarify, on April 24, 2018, at 5:36 p.m., by email, Willingham notified Weber that the Respondent's Standards of Conduct applies to all employees, and the Charging Party required the requested information in order to bargain intelligently and/or to adjust or resolve grievances. (Tr 87, 138, 186; GC 9-12). Willingham requested that Weber provide the information by April 27. (Tr 87, GC 9).

On April 30, at 4:05 p.m., by email, Willingham requested to meet with Weber about the information request after not having received a response from Respondent. (Tr 87-88; GC 9).

On May 3, at 4:11 p.m. and 4:12 p.m., by email, Weber replied that with respect to Item #3, Respondent is still collecting the requested information and will provide it when complete. (Tr 88, 189 GC 9; R 6, 7). With respect to Item #4, Weber stated that Respondent requires more time to investigate the matter and would update Willingham. (Tr 88, GC 9, R6, 7). With respect to Item #5, Weber replied that Respondent still does not see that the Charging Party has established relevance. (Tr 88-89; GC 9, R 6- 7). With respect to Items #6 and #7, Weber replied that Respondent does not see the relevance of data for non-Unit employees on the grounds that Respondent disciplined Newkirt pursuant to a collective bargaining agreement that does not apply to non-Bargaining Unit employees. (Tr 89, GC 9, 17th page).

On May 3, at 5:02 p.m., by email, Willingham replied with respect to Items #3 and #4, including the taxi pull information pertaining to Newkirt and the entire taxi team on 2nd shift, that the Charging Party would grant additional time for Respondent to respond. (Tr 89-90, 193; GC 9; R 7). Willingham renewed the request for the information Item #5, including production numbers each day of full production for the last two weeks, and further requested that Respondent provide such information by May 7. (Tr 90-91; GC 9, 21st page; R 7). With respect to Item #6, including a list of individuals disciplined for violations of SOC Section #3, #5,

#6, #11, and #14, Willingham stated that Respondent disciplined Newkirt under Respondent's SOC and that salaried employees are subject to discipline under that Respondent document. (Tr 91-92, GC 9, 21st page; GC 12; R 7),

On May 8, at 11:29 p.m., by email, Supervisor Chris Lewis replied to Willingham by stating, for the first time, that in attempting to retrieve the requested data, Respondent discovered that it can only go back 7 days, that Respondent is exploring a way to recover the data from its Information Technology (IT) department or Corporate Headquarters, and if such data is retrieved, Respondent would provide it. (Tr 92-93, 195-196; GC 9, 23rd page; R 8).

On May 9, at 12:54 a.m., by email, Willingham thanked Lewis for his response and requested that Respondent follow-up in a timely manner. (Tr 93, 195-196; GC 9, p. 21; R 8).

On May 14, at 11:52 p.m., by email, with respect to Item #3, Chris Lewis provided the Charging Party with two days of taxi pulls for Newkirt for the period of April 9 through April 11, 2018; Lewis stated that such information was all of the data that Respondent's IT department was able to recover. (Tr 93-94, 196; GC 9; R 9). Respondent did not provide any response with respect to Items #4, #5, #6, or #7. (Tr 94-95, 196; GC 9, 22nd page; R 9).

About mid-May, one month later, in an effort to secure the requested information regarding salaried employees, Willingham initiated a meeting with Weber. (Tr 96-97). Willingham requested salaried employees' information, including the SOC violations. (Tr 96). Weber replied that while such information

is not kept electronically, it is maintained in employee storage jackets and would take some time to recover if he had to go ahead and provide the information to the Charging Party. (Tr 96-97). Weber told Willingham that Corporate Legal said that Weber must not provide the information. (Tr 97). With respect to Items #3 and #4, Weber stated that such information would be provided to the Charging Party if Respondent was able to recover it. (Tr 97-98). With respect to Item #5, Weber stated that he would provide such information, but it was not ultimately provided. (Tr 98). With respect to Items #6 and #7, Weber declined to provide it. (Tr 98).

At some point after about May 14, Willingham visited Weber, initiated a conversation, and again requested the remainder of the information. (Tr 98-99). Weber reiterated the same prior responses. (Tr 99-100).

By the end of September, Jamison withdrew Grievance No. 18-0064 on the grounds that such matter had been settled at Step 3 of the contractual grievance-arbitration procedure. (Tr 134, 155-156, 199, 200; GC 8, GC 17; R 10, R 12).

Newkirt received 28 hours of pay.

On October 10, at 5:51 a.m., Jamison inquired to Webber if Jamison made the request for information. (R 25). On October 12, at 10:29 a.m., by email, Weber requested that Jamison confirm that he no longer requires the information and requested to discuss the matter further. (Tr 205; R 25). By email, on October 12, at 1:52 p.m., Jamison stated that he (Jamison) assumes that Willingham continues to require the information. (R 25). On October 12, at 3:37 p.m., by email, Weber stated that if there is any arguable relevance now that the grievance is resolved,

Weber does not see it. (Tr 204; R 25). The Charging Party did not immediately respond

On January 10, 2019, by email to Willingham, Weber stated that Respondent believes that it has supplied all relevant information that has not been provided to date, and requests that the Charging Party identify what outstanding information it still needs. (R 20). On January 11, 2019, at 7:46 a.m., by email, Weber states that all of the underlying matters are resolved, that if the Charging Party is still claiming that it requires any information then identify what information is still required. Also, at January 11, at 7:11 p.m., by email, Weber requested that the Charging Party review the original request for information and specify any information that Respondent has not provided to date. (R 20). On the same date, at 2:59 p.m., by email, Willingham requests that Respondent discontinue denying the requested information on the grounds that such conduct violates the NLRA. (R 20). Respondent did not provide a response to the Charging Party. (Tr 235-236).

IV. The Charging Party's June 26, 2018, oral information request, that Respondent furnish with bargaining Unit employee Chris Wilson's FMLA interview statement.

A. The Charging Party's information requests and rationale for requesting the information pertaining to bargaining unit employee Chris Wilson's FMLA interview statement beginning on about June 26, 2018.

Bargaining Unit employee Chris Wilson works on the 1st shift within the 9100 North Assembly Department at Dundee. (Tr 105, 107, 221). On June 25,

2018, Human Resources Generalist Joanna Carr prepared a three-page Confidential Interview Statement (FMLA interview statement) concerning Wilson. (Tr 106-107; GC 10, pp. 21-23). On the same date, Carr called Willingham and Wilson into a meeting to discuss the circumstances concerning Wilson's absence under the FMLA. (Tr 108-109, 110). The meeting lasted about 20 minutes and was consistent with meetings of this nature previously attended by Willingham. (Tr 108). The meeting consisted of questions and answers between Wilson and Carr. (Tr 110). The FMLA interview statement, which was prepared by Carr, memorialized the questions and answers. (Tr 110; GC 10).

At the conclusion of the meeting, Carr provided the FMLA interview statement to Willingham and Wilson for them to review. (Tr 110). Carr, Willingham, and Wilson each signed and dated the FMLA interview statement to memorialize the accuracy of the content. (Tr 110, 111; GC 10).

Consistent with the parties' practice when Willingham participated in prior such interviews, he requested a copy of the interview statement prepared by Respondent concerning a Unit employee, and Willingham was provided with a copy of the same document upon its completion. (Tr 110-111, 112, 117, 117-124, 125-126, 139, 140, 144; GC 11). Unlike prior interviews, on June 25, 2018, Carr told Willingham that she had been instructed by Daragon to decline the Charging Party's request to provide a copy of Wilson's FMLA interview statement. (Tr 110).

On behalf of the Charging Party, Willingham requested the FMLA interview statement pertaining to Wilson because the contents might lead to Respondent issuing discipline based on the grounds that Wilson might have engaged in misconduct with respect to his leave under the FMLA. (Tr 111). Also, Willingham requested the information in order to promote the orderly and peaceful labor relations for the mutual interest of Respondent, the employees, and the Charging Party. (Tr 111-112; Jt 1, "Purpose and Intent language, p. 4). Further, Willingham requested the information to foster friendly and cooperative relations between the Charging Party's representation at all levels and among employees; and to prepare for the possibility that the Charging Party might file a grievance on behalf of Wilson if Respondent decided to discipline Wilson based upon the content of the Confidential Interview Statement. (Tr 112; Jt 1, "PURPOSE AND INTENT" Section, p. 4; GC 10, pp. 21-23).

B. Respondent's response to the Charging Party's information request pertaining to bargaining Unit employee Chris Wilson's FMLA interview statement beginning on about June 26, 2018.

On June 26, at 12:23 p.m., by email, Daragon notified Willingham that releasing Wilson's FMLA interview statement raised confidentiality concerns on the grounds that the disclosure could pose a risk to the integrity of Respondent's ongoing investigation. (Tr 112-113; GC 10). Daragon stated that Respondent is willing to bargain an accommodation with the Charging Party which satisfies Respondent's confidentiality concerns. (GC 10, 2nd page).

On June 26, at 2:44 p.m., by email to Willingham, Labor Relations Generalist Eliza Lanway states, in part, that the requested interview statement cannot be provided because it raises confidentiality concerns from Respondent's standpoint as to the integrity of the investigation and the continued willingness of potential witnesses to cooperate with Respondent. Lanway further states that Respondent is willing to bargain an accommodation with the Charging Party regarding disclosure of the information that prompted the investigation and that the information be disclosed upon the conclusion of the investigation at the International level. (GC 10, 5th page); the International Union, UAW was not involved with respect to the Charging Party's information request pertaining to Wilson's FMLA interview statement.

On June 26, at 3:39 p.m., by email, Willingham requested that Respondent articulate its confidentiality concerns in not disclosing Wilson's FMLA interview statements to the Charging Party. (Tr 114, GC 10, 1st page).

On June 26, at 4:29 p.m., by email to Willingham, Weber states that as stated in the original email, the confidentiality concern is that disclosure of the statement while that matter is still under investigation poses a risk to the integrity of the investigation. (GC 10, 4th page).

On June 27, Willingham sent a second email to Daragon, wherein he renewed his request for Respondent to provide its specific confidentiality concerns. (Tr 114-115; GC 10, 1st and 4th page). Willingham requested an

explanation by June 29 for the change in Respondent's practice of providing the interview statements. (Tr 115, GC 10, 11).

On November 1, by email, Willingham sent an email to Weber. (GC 10). Willingham states that he recalls having discussions with Weber and emailing Respondent concerning the confidentiality concerns. (GC 10). Willingham states that Respondent never clarified the specific nature of the confidentiality concerns. (GC 10). Willingham ended the email by stating, nonetheless, the Charging Party will take the copies he requested in the past. (GC 20, 19th – 20th pages).

On November 2, 2018, at 1:41 p.m., by email, Weber stated that Respondent had repeatedly told Willingham that disclosing the statements would compromise the integrity of the investigation. (GC 10). In part, Weber provided Willingham with a copy of Wilson's requested FMLA Interview Statement from June 25, 2018 and July 16, 2018. (Tr 116; GC 10, 19). The information provided by Respondent satisfied the Charging Party's oral information request of June 26, 2018. (Tr 116; GC 10). Weber stated that Respondent is now providing the requested information at this time because disclosure would no longer compromise the fraud investigation of Wilson because the matter is completed. (Tr 116-117; GC 10).

On November 2, 2018, at 3:51 p.m., by email to Weber, Willingham stated that during prior interview sessions, the Union representative has been present and received a copy of questions and answers. (Tr 110-111, 117-124, 125-126; GC 10, 11). Also, Willingham challenged Respondent's inference that the Charging Party

would improperly disclose confidential information to compromise the investigation and accuses Respondent of improperly projecting such behavior upon the Charging Party. (Tr 117-119, 144; GC 10). Respondent did not provide a response to Willingham's email of November 2. (Tr 118).

ARGUMENT

- I. **Counsel for the General Counsel has established that the information requested by the Charging Party on about February 20, 2018, April 17, 2018 with respect to taxi “pulls” for Kelli Newkirt, taxi “pulls” of the entire taxi team on 2nd shift, and production numbers each day of full production for the last two-week period is presumptively relevant and necessary for the Charging Party to properly perform its duties and responsibilities as the designated servicing representative of the International Union for certain employees in the Unit.**

Well established Board law states that, in response to a union's request, an employer must provide relevant information that it requires to carry out its duties and responsibilities as the collective bargaining representative of an employer's employees. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-437 (1967); *Detroit Edison Co., v. NLRB*, 440 U.S. 301 (1979). The standard for determining relevance is a liberal one, and it is necessary to establish only a “probability” that the denied information would be of use to a union to meet its statutory duties. *NLRB v. Acme Industrial*, supra at 437. The Supreme Court defines a union's duties and responsibilities to include, among others, the filing and processing of grievances. *NLRB v. Acme Industrial*, supra, and the testing of any employer's bargaining claims. *NLRB v. Truitt Mfg. Co.*, supra.

A. The Charging Party's information requests are presumptively relevant.

- 1. The Charging Party requires the information to process grievances and to determine whether Respondent has violated the parties' collective bargaining agreement.**

The Board has held that information concerning bargaining unit employees is presumptively relevant and is required to be produced. *Contract Flooring Systems*, 344 NLRB 925, 928 (2005); *Ohio Power Co.*, 216 NLRB 987, 991-992 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976); *T.U. Electric*, 306 NLRB 654, 656 (1992). Where information sought concerns the filing or processing of grievances, the Board stated in *Ohio Power*:

It is not required that there be grievances or that the information be such as would clearly dispose of them. The union is entitled to the information in order to determine whether it should exercise its representative function in the pending matter, that is, whether the information will warrant further processing of the grievance or bargaining about the disputed matter.

Id. A union is entitled to relevant information during the term of a collective bargaining agreement to evaluate or process grievances and to take whatever other bona fide actions are necessary to administer the collective bargaining agreement. *ATC/Vancom of Nevada*, 326 NLRB 1432, 1434-1435 (1998); *Electrical Workers v. NLRB*, 648 F.2d 18, 25 (D.C. Cir. 1980); *J.I. Case Co. v. NLRB*, 253 F.2d 149, 153 (7th Cir. 1958).

B. The Charging Party filed grievances based on its reasonable belief that Respondent violated the parties' collective bargaining agreement.

1. The information requested by the Charging Party beginning about February 20, 2018, in writing, that Respondent furnish the Charging Party with team member interviews related to the removal of Unit employee Robert Watts, Jr. from the team leader position is presumptively relevant.

Respondent entered into a stipulation at trial that the team member interviews related to Respondent's removal of Unit employee Robert Watts Jr. as a Team Leader is relevant and necessary to the Charging Party's role as Unit employees' collective-bargaining representative. (Tr 32-33, 49-50, 50-51, 63-64). In addition, Willingham specifically and carefully documented in Watt's grievances, contractual provisions, along with other relevant language encompassed by Respondent's "Standards of Conduct", "Chrysler Group LLC Policy", and the Joint Team Leader Selection Training and Procedure Manual Team-Based Manufacturing", which documents pertain to Unit employees. (Tr 223-224, 249, 260-261; Jt 1, Sec. (4) Equal Application of Agreement; GC 2-4; GC 12; GC 13, Letter No 117, p. 104 and Letter No. 255, p. 216; GC 14, GC 15, GC 16).

The language referenced in Watts' grievances, along with the collective bargaining agreement, letters, memoranda, and parts agreements, provides for the Charging Party's right to grieve Unit employees' disputes. The Charging Party filed grievances on the that grounds that Respondent engaged in unjust harassing and unlawful retaliatory behavior toward Watts by improperly removing him from his team leader position. (Tr 37-39; GC 2-4; Jt 1, (4) Equal Application of Agreement, pp. 6-7). The credible testimony of Willingham establishes a

reasonable basis to believe that Respondent violated collective bargaining provisions concerning possible unlawful retaliatory harassment and discrimination based upon Watts' race and color. (Tr GC 2-4, Jt 1, (4) Equal Application of Agreement, pp. 6-7). A charging party's reasonable, good-faith basis for its belief is all that must be established. *Cannelton Industries, Inc.*, 339 NLRB 996, 997 (2003). In this proceeding, it is not necessary to prove that Respondent actually breached any provision of the parties' collective bargaining agreement. *Douborn Sheet Metal, Inc.*, 243 NLRB 821, 824 (1979). It is sufficient simply to establish that the Charging Party had such a bona fide belief. The record does not contain any evidence that would cast doubt on the Charging Party's good-faith intentions motivating its information request concerning Unit employees Watts, Newkirt, and Wilson.

2. The information requested by the Charging Party beginning about April 17, 2018, including a copy of Unit employee Kelli Newkirt's taxi "pulls" for the last two weeks, a copy of taxi "pulls" for the entire taxi team on 2nd shift for the last two weeks, and production numbers for each day of full production for the last two weeks is presumptively relevant information.

a. The requested taxi "pulls" information pertaining to Unit employee Kelli Newkirt for two weeks.

The Charging Party requested the taxi "pulls" information in order to process Newkirt's Grievance No. 18-0064 concerning Respondent's disciplinary action issued against her. (Tr 76-77; GC 1, 8). The Charging Party notified Respondent on April 17, 2018 that the sought information pertaining to the taxi

“pull” for Newkirt in order to investigate the relevancy of Newkirt’s disciplinary grievance and “bargain intelligently” with Respondent. (GC 7, 8, 9, 1st page).

The Charging Party sought to assess the level of Newkirt’s effort in relation to other team members. (Tr 77-78). As a result, such information is presumptively relevant. *Contract Flooring Systems*, supra. Also, the Board examines the totality of the circumstances in determining whether a respondent unreasonably delayed in responding to information requests. *The Earthgrains Co.*, 349 NLRB 389, 400 (2007) (quoting *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd in pertinent part 349.F.3d 233 (4th Cir. 2005). Here, Newkirt was assigned to perform taxi “pulls” for the period of time covered by Respondent’s discipline issued to her. (Tr. 189). Also, the requested taxi “pulls” would assist the Charging Party in assessing whether Respondent’s assertions that Newkirt was absent from her work station; that she failed to exert normal effort on the job; that she failed or refused to follow Respondent’s instruction; that she engaged in inappropriate or indecent conduct; and that she engaged in threatening, intimidating, coercing, harassing, retaliating, or abusive language toward others. (Tr 78; GC 7, 12, paragraphs 3, 5, 6, 11, and 14, pp. 1-2). The Charging Party requested the taxi “pulls” for Newkirt, and the taxi pulls for the entire taxi team on the 2nd shift for the last two weeks because Respondent disciplined Newkirt on the grounds that she failed to exert any effort in the performance of her job. (Tr 77).

On May 8, for the first time, Respondent notified the Charging Party that the taxi “pulls” pertaining to Newkirt was available for only 7 days. (GC 9, 23rd

page). Respondent notified the Charging Party that it in attempting to retrieve Newkirt's tax "pull" information, it was discovered that it can retrieve the information for only the prior 7-day period, that it was attempting to retrieve the information, and it would be provided if Respondent is successful. (Tr 92, 93). On May 9, 2018, the Charging Party requested that Respondent follow up in a timely manner.

On May 14, almost one month after the Charging Party's initial request of April 17, 2018, Respondent provided the Charging Party with only 2 days of Newkirt's requested taxi pulls for the period from April 9 through 11, 2018, on the grounds that such information was the extent of what it was able to retrieve. (Tr 94). However, if Respondent would have immediately retrieved Newkirt's taxi "pulls" upon the Charging Party's request on April 17, 2018, it could have been provided the remainder of the taxi "pulls" for Newkirt because such was available, and Respondent never asserted that such information was overly burdensome to compile or provide.

b. The requested taxi "pulls" pertaining to the entire taxi team on the 2nd shift for the last two weeks.

The Charging Party requested the taxi "pulls" because Respondent disciplined Newkirt, in part, on the grounds that she failed "to exert normal effort on the job" under Respondent's SOC. (GC 7, par. 5; GC 8). Also, Respondent asserted that the Charging Party violated SOC Sections #3, #6, #11, and #14. Labor Relations Supervisor Weber is responsible for ensuring the administration

of disciplinary procedures. (GC 177). On two occasions, after about mid-May, Weber told Willingham that Respondent would furnish the taxi “pulls” information as requested by the Charging Party in Items #3 #4. (Tr 97-100, 177). As a result, the Charging Party had a reasonable, good-faith basis for the belief that Respondent might have violated the collective bargaining agreement. (Jt 1; GC; GC 13, R 1). See *Cannelton Industries*, supra.; *Douborn Sheet Metal*, supra. Also,

Also, longstanding Board law provides that Section 8(a)(5) of the Act requires an employer to provide requested information that might be relevant to the processing of grievances. *United Technologies Corp.*, 274 NLRB 504, 506 (1985). Here, on May 3, Weber stated to Willingham that Respondent requires more time to investigate the matter and would update Willingham. (Tr 88, GC 9, 17th page). On the same date, Willingham extended additional time for Respondent to respond. (Tr 89-90, 193; GC 9, 21st page; R 7). On May 14, Respondent failed and refused to provide any response with respect to Item #4, a copy of the taxi “pulls” for the entire team taxi team on the 2nd shift for the last two weeks. (Tr 94-95, 196; GC 9, 22nd page; R 9). About mid-May 2018, on two occasions, Weber told Willingham that he would provide the information encompassed by Item #5 if such is retrievable. However, Respondent never furnished the requested information, nor did Respondent provide further response. (Tr 97-98, 99-100).

i. Nick Weber’s credibility problem.

Willingham credibly testified that during two one-on-one meetings with

Weber after about mid-May, Weber stated that with respect to the requested taxi “pulls”, including Item #3 and Item #4, Respondent would provide the Charging Party with such information if it was retrieved. (Tr 97-98). On the other hand, Weber’s responses to Respondent Counsel’s questions at trial strongly suggests that he was not credible as to the existence of the two one-on-one meetings and Weber’s statements on which Willingham credibly testified about (Tr 197-198):

Q. [Respondent’s Counsel] After May 14 did you ever tell Mark Willingham or anyone else from the Union that there was any additional responsive taxi pull data that existed?

A. [Weber] No.

Q. After May 14 did you ever tell Mr. Willingham or anyone else from the Union that there was any additional responsive taxi pull data that might exist?

A. Yes.

Q. You did tell him that? After May 14?

A. No.

Q. Okay.

A. No, I did not.

Respondent Counsel’s questions at trial and Weber’s differing responses demonstrates that the Administrative Law Judge should not credit Weber’s testimony in this regard.

c. The requested production numbers information.

Item #5, including the production numbers each day of full production for the last two weeks is presumptively relevant because such information pertains to Newkirt. The Charging Party requested Item #5 from Respondent to determine whether Newkirt was disciplined for asserted violations of the SOC #3, SOC #5, SOC #6, SOC #11, and SOC 14. Respondent's SOC concerns its charge that Newkirt failed to exert normal effort on the job under SOC #5. (Tr 78). If Newkirt's production numbers satisfied Respondent's requirements, the Charging Party might be able to successfully counter Respondent's argument that Newkirt's conduct violated its SOC. Accordingly, the Charging Party had a bona fide belief that the requested production numbers information would assist in the processing of Newkirt's grievance. (Tr 78). While Respondent's attempts to narrowly define "production numbers" as the mere number of engines produced on a given day at Dundee, the Charging Party established the relevance of the Item #5 because Willingham specifically stated in the information request that the Charging Party requires the production numbers in order to bargain intelligently with Respondent, and to adjust or resolve Newkirt's grievance. (Tr 186-187; GC 8, 9).

II. The information requested by the Charging Party beginning about April 17, 2018, including Item # 6, a list of all individuals disciplined for violations of the SOC violations of sections #3, #5, #6, #11 and #14; and Item #7, a list of all disciplines served for SOC violations of sections #3, #5, #6 and #11 in the past two years for salary employees is relevant and necessary under the Act.

In *Ohio Power Co.*, 216 NLRB at 991, the Board set forth the following test for determining the relevance of requested information:

Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required.

The Charging Party's information requests were designed to elicit information bearing on issues that directly affected Newkirt. Those issues included Respondent's position that Newkirt violated Respondent's SOC regarding the following items: (SOC #3) the unexcused absence or tardiness from her work station; (SOC #5) the failure to exert normal effort on the job; (SOC #6) the failure or refusal to follow the instructions of management; (SOC #11) inappropriate or indecent conduct; and (SOC #14) threatening, intimidating, coercing, harassing, retaliating, or using abusive language toward others. (GC 7; GC 12). This discipline raises the possibility of Respondent having engaged in disparate treatment with respect to Unit and non-Unit salaried employees because the SOC applies to "All FCA US LLC Employees" without distinction or qualification. The Charging Party requires the requested information concerning Respondent's discipline of its salaried employees in order to compare and contrast whether Respondent has disparately enforced its SOC against salaried personnel in the same manner as the discipline issued to Newkirt.

- A. Item #6: a list of employees disciplined for violations of SOC violations of sections #3, #5, #6, #11 and #14 in the past two years for salary employees; and Item #7: a list of all disciplines for SOC violations of section #3, #5, #6 and #11 in the past two years for salary employees.**

The burden for establishing the relevance of non-unit information is not heavy and depends on the factual circumstances of each case. *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). Contrary to Respondent's assertion that the Charging Party has failed to establish a basis for requiring the production of the information pertaining to salaried employees, the Charging Party has a legitimate need to know whether Respondent is treating salaried employees in a different manner than Unit employees, including but not limited to Newkirt, who asserted that Supervisor Wasielewski violated Respondent's SOC, which behavior Respondent attributed to Newkirt. (Tr 79, 189-190). Willingham wrote in the "Contract Section Involved" Section of Newkirt's Grievance No. 18-0064: "MLM past practice and DEP local practice (PM & P agreement, any other relevant, language, law, practice or policy that my apply)". Any "other "relevant language, law, practice or policy" could reasonable be construed to include the following: (1) Letter No. 117 involving "Discrimination and Harassment Prevention" that is referenced on pp. 104-108 of the "Letters, Memoranda, and Agreements, 2015 Production, Maintenance and Parts Agreement" between Respondent and the UAW; (2) the "Discrimination and Harassment Prevention" Policy set forth within Respondent's "Chrysler Group LLC Policy"; and (3) Respondent's Code of Conduct, par. 8, 9, 11, 17 and 18. (Tr

71-72, 73; GC 8, GC 13, GC 15, GC 16). The Code of Conduct pertains to both Unit employees and non-Unit salaried personnel without distinction. (Tr 78-80, 91; 224-225, 248, 249, 260-261; GC 7; GC 9, GC 12; Jt 1, Sec “(39) Maintenance of Discipline”; R 3, R 10, R 11).

The Charging Party specifically informed Weber that the Charging Party required the SOC violations pertaining to non-Unit and salaried personnel in order to determine whether Respondent had engaged in disparate treatment as to its treatment of Non-Unit salaried employees. On April 24, at 5:36 p.m., by email to Weber, Willingham stated that “FCA’s Standards of Conduct applies to all FCA employees.” Also, Willingham stated that the Charging Party requires the “information to bargain intelligently and or to adjust or resolve grievances” and specifically inquired “(what’s in the employment jackets of salary workers who were disciplined for said SOC violations?)” (Tr 137-138; GC 8; GC 9, 16th and 17 pages).

Respondent’s assertion that its labor relations department lacks any responsibility for disciplining non-Unit salaried employees at Dundee is incredible on its face. (Tr 184). Respondent would have reasonable persons believe that it has no authority to discipline its salaried employees who violate the SOC at Dundee. (Tr 184; GC 12).

III. Respondent unreasonably delayed in providing relevant and necessary information to the Charging Party concerning Unit employees Robert Watts Jr. and Chris Wilson.

The Board examines the totality of the circumstances in determining whether a respondent unreasonably delayed in responding to an information request. *The Earthgrains Co.*, supra. The circumstances include the complexity and extent of the information sought, its availability, and difficulty in retrieving the information. *United States Postal Service*, 354 NLRB No. 58, slip op. at 4 (2009).

A. Respondent unreasonably delayed in furnishing the Charging Party with the requested information pertaining to the team member interviews related to the removal of Unit employee Robert Watt Jr. as team leader, from February 20, 2018 to May 24, 2018.

The information pertaining to the removal Watts as team leader is presumptively relevant because such information pertains directly to a Unit employee. Respondent's conduct as to the delay in providing the Charging Party with the remaining requested team member interview forms in this regard is clearly unlawful. Respondent had already provided other requested information to the Charging Party on March 2. Respondent's failure on March 2 to provide the Charging Party with the 6 remaining team member interview forms related to Respondent's removal of Watts as a team leader prevented, or at minimum, significantly delayed Willingham in securing a resolution of Grievance Nos. 18-0029 and 18-0030 pertaining to Watts' removal at Step 1 of the parties' grievance-arbitration procedure. (Tr 61; GC 2, 3). While Respondent contends that the

Charging Party and Respondent did not resolve the Watts' grievances until Step 3 in September 2018, more than 7 months had passed since Willingham initially filed Grievance Nos. 18-0029 and 18-0030 on February 20.

The Board has held that an employer's two-month delay in providing requested information violates the Act where the employer knew or had access to much of the information and told the union that the information would be provided immediately. *Hall Industries*, 285 NLRB 391, 393-394 (1987). Here, the Charging Party initially requested the team member interview forms pertaining to Watts, and Weber provided the Charging Party with only two of the requested interview forms on March 2, even though Weber was present during all 8 of the interviews related to Watts' removal as team leader. (Tr 226, 229-230). Despite Weber's presence at the team members interviews, he did not provide the Charging Party with the 6 remaining requested Team Member interview forms related to the removal of Watts as Team Leader until May 24, 2018. (Tr 226, 229-230). The delay from March 4 to May 24, 2018 amounts to an almost three-month delay. The Board has held that a seven-week delay was unreasonable where most of the requested information was readily available after the union made additional requests. *Bundy Corp.*, 292 NLRB 671 (1989). Here, after the Charging Party renewed its information request for the omitted remaining team member interview forms on March 4, by email, Weber did not provide such information until May 24. The Board has held that a three-month delay in providing information was unreasonable where the respondent offered a vague and unsupported explanation.

El Paso Electric Co., 355 NLRB No. 71, slip op. at 52 (2010). Here, Respondent's position that it made a good-faith mistake as to the delay in providing the remaining team member interview forms qualifies as vague and unsupported in the context of Weber's presence during the interviews that generated the requested forms, his failure to immediately provide such information in response to Willingham's emails of March 4, and Weber's statement on May 24 that he (Weber) "didn't see it as being important". (Tr 54, 58, 172, 212-213). Under the circumstances, Weber's statement to the Charging Party on May 24 shows a complete lack of good faith on the part of Respondent with respect to the delay in providing the remaining and requested readily available 6 interview forms. An employer must make a good-faith effort to respond to information requests under the circumstances. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 n.9 (1993). Respondent did not provide an explanation for such delay in providing the requested information to the Charging Party until May 24, 2018 even though Willingham specifically renewed the Charging Party's request to Weber for the remaining team leader interview forms pertaining to Watts by emails of March 4, 2018. (Tr 54-55).

1. Nick Weber' additional credibility problem.

Respondent's assertion that Weber acted in good faith when he mistakenly failed to provide the remaining team member interview forms related to the removal of Watts until May 24 is belied by logic and reason because Weber admits having met with team members regarding Watts' removal as team leader.

(Tr 208). Also, Willingham's emails of March 4, at 4:22 p.m. and 4:38 p.m. were sufficiently comprehensive in content to convey to Weber that the Charging Party sought to secure a copy of all team member interview forms, including the remaining interview forms Weber omitted from his email submission to Willingham on March 2. (Tr 213). To the extent that Respondent asserts that Weber's omission should be excused on the grounds Weber had already provided Willingham with other requested information on March 2, such argument fails scrutiny. Also, Weber's lack of both candor and good faith as to his assertion that he mistakenly omitted the remaining requested team member interview forms renders it more likely than not that Willingham credibly testified that Weber told Willingham on or about May 24, 2018 that he (Weber) did not believe that Weber's "mistake" was of importance. Counsel for the General Counsel believes that the testimonies of Willingham Jamison should be credited over Weber.

In addition, Counsel for the General Counsel's exhibits as to the Charging Party's email information requests and related Respondent emails are more credible than Respondent's evidence in this regard because a greater number of the emails in the context of the timing in which such emails were actually exchanged by the parties.

B. Respondent unreasonably delayed in furnishing the Charging Party with requested necessary and relevant information pertaining to Unit employee Chris Wilson's Family and Medical Leave Act interview statement, from about June 26, 2018 to November 2, 2018.

The Charging Party's information request pertaining Chris Wilson's FMLA interview statement is presumptively relevant because such information pertains directly to Unit employee Wilson. The Board requires neither that a grievance must be pending nor that the requested information clearly dispose of said grievance. The Board requires only that the requested information be potentially relevant to a union's determination of the merits of a grievance or an evaluation into whether the union should pursue said grievance. *United-Carr Tennessee*, 202 NLRB 729, 731 (1973). Here, on June 25, Willingham sought Wilson's FMLA interview statement in keeping with the Charging Party's past practice when such interviews have been conducted, and Respondent immediately complied with the Charging Party's request for such statement. On behalf of the Charging Party, Willingham requested the interview statement because the content of the document might lead to Respondent issuing discipline to Wilson on the grounds that Respondent might assert misconduct with respect to his leave taken under the FMLA and to promote orderly and peaceful labor relations for the mutual interests of the Charging Party, Respondent, the employees, and the Charging Party. (Tr 111-112; Jt 1, "PURPOSE AND INTENT" language, p. 4).

On June 25, for the first time, Carr notified Willingham that she had been instructed by Daragon to decline the Charging Party's request. (Tr 110-111, 117-

124, 125-126, 140, 144; GC 10, pp. 21-23). Respondent, in the form of Daragon, by email, raised confidentiality concerns because of Respondent's ongoing investigation concerning Wilson and proposed to bargain an accommodation with the Charging Party. However, Daragon did not respond to either of Willingham's subsequent emails of June 26 and June 27, 2018, wherein Willingham requested on both dates that Daragon articulate Respondent's confidentiality concerns in not disclosing Wilson's FMLA interview statement. (Tr 243-244). On June 27, Willingham renewed the Charging Party's request for a copy of Wilson's FMLA interview statement, requested that Respondent provide Respondent's specific confidentiality concerns, and requested such explanation by June 29 for Respondent's change in the practice in providing requested information about FMLA interview statements. (Tr 114-115, 250, 251; R 18).

On November 2, by email, more than 4 months after the Charging Party's initial request of June 27, Respondent, in the form of Weber, furnished the Charging Party with Wilson's FMLA interview statement and stated only that such information is being provided now that delayed disclosure would no longer compromise the fraud investigation of Wilson. (Tr 116-117). A little over two hours later, on the same date, Willingham replied, by email, and challenged Respondent's discontinuation of its practice of providing interview statements and the inference that the Charging Party would improperly disclose confidential information. Respondent never responded to Willingham's November 2 email. (Tr 118).

The Charging Party unlawfully delayed in providing Unit employee Wilson's FMLA interview statement, from June 26 to November 2, which constitutes over a four-month delay. The Board has held that a 3-month delay was unreasonable where a respondent offered a vague and unsupported explanation. *El Paso Electric Co.*, supra. Here, Daragon testified that Respondent's confidentiality concerns about the disclosure of interview statements prompted the delay in providing Wilson's FMLA interview statement. However, Daragon's assertions were vague, nebulous and unsubstantiated. (Tr 245-246).

1. Bob Daragon's testimony lacks credibility.

Counsel for the General Counsel requests that the ALJ credit Willingham's testimony and discredit Daragon's testimony because Willingham was more specific and supported by more comprehensive exhibits, including emails (GC 6, GC 9, GC 10. Willingham credibly and consistently testified that Respondent did not convey that "fraud" was the reason for Respondent's delay in providing Wilson's FMLA statement until Weber's email of November 2, at 1:41 p.m. (Tr 140-144; GC 10, pp. 19-10). Also, Daragon testified that he was told by his employee that she was concerned about immediately disclosing Wilson's FMLA interview statement because of the existence of an ongoing investigation and that Wilson did not fully answer the questions in the interview. Daragon did not testify, however, that "fraud" was a concern in Respondent's decision to delay in disclosing Wilson's FMLA interview statement to the Charging Party. (TR 243). Also, Labor Relations Generalist Eliza Lanway admitted in her testimony

that she does not recall whether she informed Willingham that “fraud” was the basis for Respondent’s delay in providing Wilson’s FMLA statement of the Charging Party. (Tr 262; GC 10, pp. 19-20).

IV. The presence of grievance settlements do not render the Charging Party’s information requests of about February 20, 2018 and April 17, 2018 moot.

The Board has held that an undue delay in providing and failing to provide information relevant to a grievance is not rendered moot by the settlement of a grievance because the requested documents may be relevant to other members of the bargaining unit. *U.S. Postal Service*, 332 NLRB 635 (2000). Here, the Board reasoned that the relevancy of the request is determined as of the time of said request and later refusals. Here, even though the Charging Party settled the grievances pertaining to Watts and Newkirt, the Charging Party never withdrew its February 20 and April 17 information requests, nor was its statutory right to the requested information relinquished. Willingham, who handles grievances at Step 1 of the parties’ contractual grievance-arbitration procedure, was prevented by Respondent from securing an earlier of the grievances pertaining to Watts and Newkirt by both the refusal in providing the requested relevant and necessary information to the Charging Party. (Tr 61; Jt 1, “GRIEVANCE PROCEDURE”, Sections 22-38, pp. 27-38 and “DISCHARGE AND DISCIPLINE” Sections 39-43, pp. 39-41).

Respondent’s failure and refusal and delay in providing information to the Charging Party at Willingham’s 1st Step undermines the Charging Party’s duty to

enforce the contractual rights of Unit employees Watts and Newkirt. (Tr 61). Also, the absence of a resolution of each of the Charging Party's grievances pertaining to Watts and Newkirt until Step 3 caused the underlying controversies to fester, and thereby damaged the bargaining process. (GC 2, GC 3, GC 8).

Respondent's blanket denials as to the Charging Party's requests for the taxi "pulls" for the entire taxi team on 2nd shift for the last two weeks; production numbers each day of full production for that last two weeks, and both disciplines issued to, and served by, salaried personnel for their violation of Respondent's Standards of Conduct, not only prevents the Charging Party from gathering evidence relevant to employees' claims, but also erode the parties' ability to resolve their differences at grievance meetings by suppressing information that could reveal the strength of weaknesses of positions being advanced. *United-Carr Tennessee*, supra. Respondent's refusal to provide the requested information pertaining to Newkirt's grievance left the Charging Party without the ability to prepare proposals to submit to Respondent in order to resolve Newkirt's grievance much sooner than September 2018. It is reasonable to assume that the Charging Party's possession of relevant and requested information might have assisted the Charging Party in securing a prompt resolution of the grievances. Respondent's delay from April 17 in providing the taxi "pulls pertaining to Newkirt's discipline, along with its outright refusal to provide a copy of the taxi "pulls" for the entire taxi team on 2nd shift for the last two weeks; production numbers for each day of full production for the last two weeks; and both disciplines issued to, and served

by, salaried employees for their violation of Respondent's Standards of Conduct, possibly contributed to a delay in the Charging Party and Respondent resolving Newkirt's Grievance No. 18-0064 earlier than the grievance settlement achieved in September 2018 at Step 3 of the parties' contractual grievance-arbitration procedure.

If Respondent had provided the Charging Party with the requested information at Willingham's Step 1 level, he might have been able to negotiate a resolution. Specifically, with respect to the removal of Watts from the team leader position, Respondent delayed in providing all of the requested team member interview statement from February 20 to about May 24. Even though Watts' Grievance Nos. 18-0029 and 18-0030 were not settled until November 2018, the requested information could have contributed to the parties securing a settlement of Watt's grievances much sooner.

Even though the grievance settlements consummated by the Charging Party and Respondent with respect to the grievances pertaining to Watts and Newkirt resolved the subject Respondent conduct against them, the Charging Party had the capability to reinstate the withdrawn grievances without prejudice up to within "three months of withdrawal". (Tr 135-136, 263; Jt 1, Sec. "(30) Time of Appeals", pp. 34-35). Consequently, despite the Charging Party's withdrawal of the grievances pertaining to Watts and Newkirt, about November 19 and about late September, respectively, the Charging Party could have subsequently reinstated the grievances under the collective bargaining agreement in the event that

Respondent did not comply with the grievance settlements. (Jt 1, Sec. “(30) Time of Appeals”, par. (iii)(b), pp. 34-35). As a result of the resurrected grievances, the Charging Party would not have to had to file new information requests because such were never withdrawn.

V. The amendments at trial are not barred by Section 10(b) of the National Labor Relations Act.

Prior to the opening of the trial, Counsel for the General Counsel sought Respondent Counsel’s concurrence to amend the Consolidated Complaint at trial. (GC 1(l)). However, it was not until the opening of the trial that Respondent’s Counsel announced the objection to Counsel for the General Counsel’s amendments in their entirety on the grounds that review of the formal papers revealed that portions of the Consolidated Complaint are not contained in either the original or amended charges. (Tr 6-7; GC 1(a), GC 1(c), 1(c), 1(g) and 1(l)). Respondent contends that that the proposed amendments are barred under Section 10(b) of the Act and urges the dismissal of Consolidated Complaint paragraphs 6, 7(a), 7(d), 7(e) and 10(c). (Tr 8; 1(l)). Contrary to Respondent’s position, Counsel for the General Counsel’s amendments are timely filed under Section 10(b).

Section 102.17 of the Board’s Rules and Regulations permits ??? based upon terms that seem just. As a consequence, the trial judge has broad discretion. See *Empire State Weeklies Inc.*, 354 NLRB No. 91, slip op. 2 (2009). Amendments are generally allowed when they are sufficiently related to existing allegations and respondent will not suffer undue prejudice. See *Payless Drug*

Stores, 313 NLRB 1220 1220-1221 (1994); and *Pincus Elevator & Electric Co.*, 308, NLRB 684, 684-685 (1992), enfd. mem. 998 F.2d. 1004 (3d Cir. 1993); *Sheet Metal Workers 91 (Schebler Co)*, 294 NLRB 766, 774-775 (1989), enfd. in part and remanded in part 905 F.2d 417 (D.C. Cir. 1990) (amendments submitted after the close of trial are too late). Complaint allegations must be closely related to charge allegations, and the alleged unfair labor practices in the complaint just have taken place less than 6 months before the filing of the charge. *Trade Fair Supermarkets*, 354 NLRB No. 16, slip op. at 3 (2009).

In applying the cases at bar, the proposed amendments are, in fact, sufficiently related to existing allegations, Respondent did not incur undue prejudice, and the unfair labor practices which are the subject of the Consolidated Complaint occurred well within the six-month period before the current charge were filed. The Charging Party E-filed and served the charge in Case 07-CA-219895 on May 8, 2018 and May 9, 2018, respectively. In Case 07-CA-219895, the Charging Party alleged that since April 17, 2018, Respondent, by various named representatives, has violated Section 8(a)(5) of the Act by refusing to provide the Charging Party with production data, salary employees, and discipline data. (GC 1(a), GC 1(b)). The charge in Case 07-CA-219895 was served upon Respondent on May 9, 2018.

A. The Charging Party filed the original charge in Case 07-CA-221914 on June 12, 2018 alleging that since around April 20, 2018, Respondent has unreasonably delayed in providing relevant and necessary information to the

Union regarding team member interviews pursuant to a grievance investigation, in violation of Section 8(a)(5). (GC 1(c), GC 1(d)). The original charge in Case 07-CA-221914 was served upon Respondent on June 13, 2018. (GC 1(d)). On July 10, 2018, the Charging Party filed the amended charge in Case 07-CA-221914 on July 20, 2018, alleging that since around April 20, 2018, Respondent has unreasonably delayed in providing relevant and necessary information to the Charging Party regarding team member interviews pursuant to a grievance investigation; and since June 25, 2018, Respondent has failed to provide necessary and relevant information regarding three FMLA interviews, in violation of Section 8(a)(5). (GC 1(e), GC 1(d)). The amended charge in Case 07-CA-221914 was served upon Respondent on July 11, 2018. (GC 1(f)).

B. *Consolidated Complaint par. 6* erroneously stated that since about February 20, 2018, the Charging Party requested, in writing, that Respondent furnish the Charging Party with team member interviews related to an FMLA investigation. GC 1(l), par. 6. (GC 1(g), par. 6). In Case 07-CA-221914, while the date of the alleged violation—April 20, 2018—is not the same date as alleged in the Consolidated Complaint par. 6—February 20, 2018—the conduct referenced in both the Consolidated Complaint and in the charge are sufficiently related: Respondent’s unreasonable delay in providing relevant and necessary information to the Charging party regarding team member interviews pursuant to a grievance investigation. The charge in Case 07-CA-221914, if approved by the Administrative Law Judge, would state: “Since about February 20, 2018, the

Charging Party requested in writing, that Respondent furnish the Charging Party with team member interviews related to the removal of Robert Watts Jr as team leader.” The proposed amendment to the Consolidated Complaint did not prejudice Respondent in presenting its case at trial. Also, the conduct of February 20, 2018 is clearly filed timely within the 6-month statute of limitations under Section 10(b) period, which began on December 12, 2017.

C. The proposed amendment of Consolidated Complaint par. 7(a) is merely intended to reflect the correct spelling of Unit employee Kelli Newkirt, which is misspelled as “Newkirk” in the Consolidated Complaint which issued on September 27, 2018. The proposed amendment is sufficiently related to the current charge allegation, and Respondent would not suffer undue prejudice as a result of the amendment.

D. The proposed amendment of Consolidated Complaint par. 7(d) addresses the inadvertent omission of reference to Standard of Conduct Section #14. Like par. 7(a) the proposed amendment pertains to conduct that occurred well within the Section 10(b) period, and is sufficiently related to the charge allegations because it references Respondent’s alleged failure to provide information about both discipline data and salaried employees.

E. The proposed amendment of Consolidated Complaint par. 7(e) addresses the grammatically incorrect language in par. 7(e) because the current language refers to “Item #7: A list of all disciplines served for SOC violations [sic] sections #3, #5, #6, #11 in the past two years for salary employees.” The proposed

amendment would reflect a grammatically correct par. 7(e): “Item 7: A list of all disciplines served for SOC violations of Sections #3, #5, #6, #11 in the past two years of salary employees.” The proposed amendment pertains to conduct that occurred well within the Section 10(b), the proposed amendment is sufficiently related to the original charge, and Respondent was not prejudiced in presenting its case as to Consolidated Complaint par. 7(e).

F. The proposed amendment to Consolidated Complaint par. 10(c) addresses the change of the allegation from a failure and refusal to provide information to an unreasonable delay. The proposed amendment is sufficiently related to the existing Consolidated Complaint, and Respondent did not incur any undue prejudice in presenting its case at trial with respect to paragraph 10(c).

CONCLUSION

For the reasons stated above, the undersigned respectfully requests that the ALJ find that Respondent violated the Act and order it to take the remedial actions outlined in Appendix A.

Dated at Detroit, Michigan this 19th day of April 2019.

/s/ Eric S. Cockrell

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APPENDIX A

SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT, 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 interfere with, restrain or coerce you in the exercise of the above rights.

WE WILL NOT, upon request, refuse to bargain collectively and in good faith with **Local 723, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO** (the Union), as the designated servicing representative of the exclusive collective-bargaining representative of the employees in the following unit (Unit):

All production and maintenance employees employed by us at our Dundee Michigan Engine Plant, excluding all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, and confidential clerical employees.

WE WILL NOT fail and/or refuse to provide, and/or unreasonably delay in providing, the Union with information that is relevant and necessary to its role as your designated servicing representative of the exclusive collective-bargaining representative.

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

WE WILL NOT in any like or related manner, fail and refuse to bargain collectively and in good faith with the Union as the designated servicing representative of the exclusive collective-bargaining representative of our employees in the Unit, with regard to wages, rates of pay, hours of employment, and other terms and conditions of employment.

WE HAVE provided the Union with the information regarding team member interview forms it requested on February 20, 2018 and Unit employee Chris Wilson's FMLA interview statement it requested on June 26, 2018.

WE WILL provide the Union with the following information it requested on April 17, 2018: (a) A copy of taxi pulls for Unit employee Kelli Newkirt for the two weeks ending April 17, 2018, if it exists. If the information does not exist, we will inform the Union that the documents do not exist and provide the Union the circumstances under which they no longer exist; (b) A copy of taxi pulls of the entire taxi team on 2nd shift for the

two weeks ending April 17, 2018, if it exists. If the information does not exist, we will inform the Union that the documents do not exist and provide the Union the circumstances under which they no longer exist; (c) Production numbers each day of full production for the two weeks ending April 17, 2018; (d) A list of all non-bargaining unit individuals disciplined for violations of Standards of Conduct (SOC) violations sections #3, #5, #6, #11, and #14 in the past two years; and (e) A list of all disciplines issued for SOC violations sections #3, #5, #6, and #11 in the past two years for all non-bargaining unit employees.

WE WILL provide the Union with the FMLA interview statement it verbally requested on June 26, 2018.

WE WILL, upon request, bargain collectively and in good faith with the Union as the designated servicing representative of the exclusive-collective bargaining representative of our Unit employees concerning wages, hours, rates of pay, hours of employment and other terms and conditions of employment.

FCA US LLC

(Employer)

Dated: _____

By: _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

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Presented by electronic service on:

Deputy Chief Administrative Law Judge

Arthur Amchan, Deputy Chief Administrative Law Judge

Trial Judge

Melissa M. Olivero, Administrative Law Judge

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