UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALCOA CORPORATION
and

Case 25-CA-219925

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

GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted by:

Raifael Williams

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Comes now Counsel for the General Counsel and respectfully submits to the Board this Answering Brief to the Exceptions to the Decision of the Administrative Law Judge filed by Alcoa Corporation, hereinafter referred to as the Respondent. Counsel for the General Counsel hereby requests that Respondent's exceptions be denied and that the Administrative Law Judge Decision in the instant case, which issued on March 27, 2019, be affirmed.

I. STATEMENT OF THE CASE

On February 5, 2019, a hearing was held before Administrative Law Judge Paul Bogas regarding the instant case. On March 12, 2019, the parties filed post-hearing briefs. On March 27, 2019, the Judge issued his decision. In his decision, the Judge correctly concluded that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (Act) by instructing employees not to discuss investigatory interviews with other employees (Decision, p. 5, l. 23 – p. 6, l. 51). The Judge also correctly concluded that the Respondent violated Sections 8(a)(1) and (5) of the Act by failing to provide the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 104's, hereinafter referred to as the Union, with relevant and necessary information, specifically, the names of employees who provided

witness statements to Respondent as part of an investigation wherein an employee was terminated (Decision, p. 7, l. 1 – p. 9, l. 16). Furthermore, the Judge correctly concluded that the Respondent violated Sections 8(a)(1) and (5) of the Act by failing to provide the Union with relevant and necessary information in a timely manner, specifically, the dates of the employee witness interviews (Decision, p. 9, l. 18 – p. 10, l. 29).

II. STATEMENT OF THE FACTS

A. Background

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

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

B. Respondent's Investigation

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

C. Union's Requests for Information

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

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

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

About April 16, 2018, Union Business Agent Underhill submitted an information request to Labor Relations Specialist Carr requesting 11 items to investigate the grievance concerning Employee Williams' termination. Specifically, Item 4 requested a list of all safety protocols including rules that apply to truck drivers/contract employees pertaining to loading and unloading of their trucks; dates and times for which pack supervision had been approached concerning truck drivers/contract employees violating safety protocols, including names, dates and times of documented meetings for which truck drivers had been reinstructed on safety procedures; and the names of any truck drivers/contract employees that have been banned from the Respondent since April 1, 2017. Item 6 requested information pertaining to the interviews of the one dayshift hourly employee and five afternoon shift hourly employees that were provided

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

About April 23, 2018, Labor Relations Specialist Carr sent an email which provided information in response to Items 1, 2,3 ,5, 9, 10, and 11 of Union Business Underhill's April 16, 2018 information request. With respect to Item 4, Carr stated that hard copies would be bought to the Union hall. With respect to Item 6, Carr stated that "Based on confidentiality request of employee's names will not be shared at this time. Attached we have provided 4 sworn statements from hourly employees that were interviewed. All employees declined union representation. Terrence Carr interviewed all employees with 2 of the interviews taking place in Building 1 and 4 interviews in the Pack/Ship conference room." With respect to Item 8, Carr stated Underhill should see his response to Item 2 and notes for truck drivers and contract employees were provided in the initial information request. Carr also stated "Ginger Molak Night Hawk employee 3/13/18 unsure on exact time phone interview from Terrence's office interview completed by Terrence Carr" (TR 29- 32; GC Ex 10). About April 26, 2018, Underhill submitted an information request to Carr stating that Carr's April 23, 2018 response was incomplete. The information request also stated that Carr had not provided information in response to Items 4, 6, and 8 of his April 16, 2018 information request. Specifically, the information request stated that Carr did not provide Item 6, which requested the names of the employees who were interviewed by Carr and the dates of the interviews (TR 33; GC Ex 11).

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

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

III. ARGUMENT

A. The Judge Correctly Concluded That Respondent Violated Section 8(a)(1) of the Act By Instructing Employees to Not Discuss Investigatory Interviews With Other Employees.

In its exceptions, the Respondent argues that the Judge erroneously concluded that the Respondent violated Section 8(a)(1) of the Act by instructing employees, during its investigation, that they should keep the conversations confidential because the instruction prohibited any discussions the interviewees might want to have with anyone at all, including their Union representative. The Respondent also argues that the Judge did not rely on any testimony from any witness that they wanted to discuss the matter with their Union representative and did not do so because of the instruction. The Respondent further argues that there was no evidence demonstrating that employees felt chilled in their ability to discuss the matter with their co-workers or Union representative. Additionally, the Respondent argues that the Judge ignored that Labor Relations Specialist Carr informed employees that they should keep the conversations confidential because employees' history of failing to participate in investigations.

Despite the Respondent's arguments, the Judge correctly concluded that the Respondent violated Section 8(a)(1) of the Act by instructing employees not to discuss investigatory interviews with other employees about March 19, March 20, April 3, and April 5, 2018. In support of his decision, the Judge cited Verizon Wireless, 349 NLRB 640,640 fn.5 and 658 (2007); Ang Newspapers, 343 NLRB 564, 565 (2004); and Caesar's Palace, 336 NLRB 271, 272 fn.6 (2001), in which the Board held that, "where a violation of Section 8(a)(1) of the Act is alleged, the first question is whether the employer's conduct interferes with the employee's rights under Section 7 of the Act. If it does, the employer may escape a finding of violation by

demonstrating a legitimate and substantial business justification that outweighs the employee's interests under Section 7". Also, in support of his decision, the Judge cited Fresenius USA Mfg., Inc., 358 NLRB 1261, 1261 fn.1 (2012), affd. in relevant part after remand at 362 NLRB 1065 (2015); SNE Enterprises, Inc., 347 NLRB 472 (2006), enfd. 257 Fed. Appx. 642 (4th Cir. 2007); and Westside Community Mental Health Center, 327 NLRB 661, 666 (1999), in which the Board held that it is well-established that an employer interferes with Section 7 rights by prohibiting employees from discussing workplace concerns, particularly if those workplace concerns relate to discipline or potential discipline. Moreover, the Board also held that an employer's restriction on employee communications regarding an investigation is overbroad when that restriction is not limited by time or place. (Decision, p. 5, l. 28 – p. 6, l. 10).

In his decision, the Judge found that Labor Relations Specialist Carr interfered with employees' Section 7 rights by prohibiting them from discussing a workplace matter relating to a discipline, specifically, the discipline of Employee Williams. The Judge also found that Carr's interference was particularly profound because his instruction was unlimited in terms of both duration and place. The Judge further found that, on its face, Carr's instruction to employees to keep their conversations confidential prohibited any discussions the interviewees might want to have with anybody at all, including their collective bargaining representative. Moreover, the Judge found that Carr's instruction could not be justified by the need to complete Respondent's investigation without witnesses influencing each other's accounts (Decision, p. 6, l. 10-21).

Also, in his decision, the Judge correctly concluded that the Respondent failed to demonstrate a legitimate and substantial business justification for Labor Relations Specialist Carr's instruction to employees to keep their conversations confidential outweighed employees' Section 7 rights. The Judge found that the only justification offered for Carr's instruction was

his assertion that "historically hourly employees did not write out statements on other hourly employees." The Judge also found that Carr's conclusory assertion about the historical reticence of hourly employees was not supported by evidence of specific examples, or even the mention of specific examples. The Judge further found that, although Carr falsely claimed to the Union that the interviewees themselves requested confidentiality, the Respondent conceded that not one of the employees interviewed actually requested confidentiality. Additionally, the Judge found that the testimony did not show that any of the interviewees demonstrated discomfort or reticence about reporting on Williams' conduct (Decision, p. 6, l. 23-34).

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

upon the foregoing, record evidence supports the Judge's findings and conclusions that the Respondent violated Section 8(a)(1) of the Act by instructing employees not to discuss investigatory interviews with other employees about March 19, March 20, April 3, and April 5, 2018.

B. The Judge Correctly Concluded That Respondent Violated Sections 8(a)(1) and (5) of the Act By Refusing to Provide Witness Names to the Union.

In its exceptions, the Respondent argues that the Judge erroneously concluded that it violated Sections 8(a)(1) and (5) of the Act by refusing to provide the Union with the names of the witnesses who participated in the Respondent's investigation wherein an employees was terminated. The Respondent also argues that the Judge erroneously found that the Union's generalized need for the witness names outweighed the Respondent's legitimate concerns of retaliation against Employee Taborn. The Respondent further argues that the Judge erroneously ignored the fact that the Respondent offered the Union an accommodation in response to its request for the witness names and provided the redacted witness statements. Additionally, the Respondent argues that the Judge ordered the disclosure of the witness names even though the Union has no continued need for the information.

Despite the Respondent's arguments, the Judge correctly concluded that it violated Sections 8(a)(1) and (5) of the Act by refusing to provide the Union with the names of the witnesses who participated in the Respondent's investigation wherein an employee was terminated. In support of his conclusion, the Judge cited American Medical Response West, 366 NLRB No. 146 (2018), in which the Board recently held that a union's request for witness names made in connection with a grievance constituted a request for relevant and necessary information (Decision, p. 7, l. 21-24). In his decision, the Judge found that, in order to evaluate the merits of

the grievance concerning Employee Williams' termination and/or to challenge the Respondent's claim that Williams engaged in conduct warranting his termination, the Union needed to identify, and likely interview, the employees whose accounts the Respondent obtained in the course of its investigation. Thus, the Judge concluded that the Respondent had an obligation to provide the witness names to the Union unless it could establish a valid defense for not doing so (Decision, p. 7, l. 25-26).

In his decision, the Judge concluded that the Respondent had failed to establish a legitimate interest in keeping the witness names confidential, much less one that outweighed the Union's need for the information (Decision, p. 7, l 40-41). The Judge found that, on April 23, 2018, when the Respondent informed the Union that it was refusing to supply it with the names of the six hourly employees, the only reason that the Respondent gave was that the employees themselves had requested that the interviews be kept confidential. The Judge also found that the Respondent subsequently admitted that the Respondent's stated justification was false. The Judge noted that, during the trial, the Respondent admitted that, contrary to the confidentiality interest it claimed when it announced its refusal to provide the names of the interviewed employees to the Union, not a single one of the six hourly employees had, in fact, requested confidentiality. The Judge also noted that, during the trial, the Respondent admitted that, at the time of its April 23, 2018 refusal, it had no knowledge, or even a belief, that the Union or employees were retaliating against employees for cooperating with the investigation. Thus, the Judge concluded that the Respondent failed to meet its burden of showing that, when it refused to provide the names of interviewed employees on April 23, 2018, it had any legitimate confidentiality interest, much less that it had a confidentiality interest that was so substantial that

it outweighed the Union's well-recognized need for witness names sought in connection with representing an employee in a grievance proceeding (Decision, p. 7, l. 41 – p. 8, l. 8).

Also, in his decision, the Judge also concluded that the email dated April 26, 2018 from Supervisor Shanks to Labor Relations Specialist Carr concerning alleged trash and salt being placed in Employee Taborn's boots and the email dated May 18, 2018 from Taborn to Carr stating that the Union had removed him from his position as Union steward did not demonstrate the Respondent had a legitimate confidentiality interest (Decision, p. 8, l. 25-27). The Judge found that Carr did not testify that the Respondent performed any investigation regarding Taborn's claim about the treatment of his boots. The Judge also found that Carr did not testify that he talked to Taborn about the boot incident or identified the date when incident was supposed to have occurred. The Judge further found that there was no evidence demonstrating that the Respondent delved into the matter further or otherwise treated the allegations about Taborn's boots as a serious or persistent issue. Moreover, the Judge found that Carr did not testify that he investigated Taborn's claim that the Union had removed him from his position as Union steward to determine the veracity or circumstances regarding this report from Taborn or otherwise handled it as one would a serious matter. Additionally, the Judge found that the Union's decision about who could best serve as a Union steward to deal with the Respondent was an internal Union matter that had no effect on the steward's employment relationship with the Respondent. Finally, the Judge found that an employer has very limited, if any, legitimate interest in a union's decision regarding a purely internal union matter of this kind. Thus, the Judge concluded that the Respondent could not persuasively argue that the Taborn's report was so consequential as to override the Union's right to obtain information needed to represent a discharged employee in a grievance proceeding (Decision, p. 8, 28-41).

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

Despite Labor Relations Specialist Carr's testimony, the Respondent admitted, at trial, that, during the interviews with employees, Labor Relations Specialist Carr told the employees: (1) to keep in mind that their conversations were confidential; (2) they should keep their conversations confidential, including from supervision and other employees; and (3) if other people asked about their conversations with him, to decline to answer. The Respondent also admitted that none of the interviewed employees asked Carr to keep their conversations with him

confidential (TR 13-14, 54). Furthermore, the Respondent admitted that, prior to April 26, 2018, it did not have any belief and/or knowledge about any witness or employee being harassed or intimidated by any employee or Union official (TR 54-55). Additionally, the Respondent did not provide any evidence demonstrating that the Union was involved with placing salt and trash in Taborn's boots. Finally, the Respondent denied the Union's request for the names of the employees who were interviewed by Carr prior to April 26, 2018, the date that Carr received an email from Pack Crew Leader Shanks concerning Employee Taborn. Specifically, the Respondent had denied the Union's April 16, 2018 request for the names of employees who were interviewed by Carr in its April 23, 2018 response to the Union (TR 24-32; GC Ex 9; GC Ex 10). Based upon the foregoing, it is clear that the Respondent cannot establish a legitimate and confidential interest that outweighed the Union's interest for the names of the employees who were interviewed by Carr. Thus, the Union was not required to accept the Respondent's proposed accommodation, the redacted witness statements. Therefore, the Respondent's failure to provide the Union with the names of the employees who were interviewed by the Respondent pursuant to the Union's April 16 and 26, 2018 information requests violated Section 8(a)(1) and (5) of the Act.

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

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

The Board has held that a union's request for witness names made in connection with a grievance constitutes a request for relevant and necessary information. American Medical Response West, 366 NLRB No. 146 (2018); Transport of New Jersey, 233 NLRB 694 (1977). The Board has also held that, if relevancy is established, an employer may plead as a defense to providing the information a legitimate and confidential interest. Northern Indiana Public Service Company, 347 NLRB 210 (2006). The burden of establishing this defense of confidentiality rests on the employer or the party asserting it. Lasher Service Corporation, 332 NLRB 834 (2000). If the employer can establish a legitimate and confidential interest, the Board then weighs the party's interest against the union's need for the information. Even if the employer's interest based on confidentiality outweighs the union's interest for the relevant information, an employer must offer an accommodation. Borgess Medical Center, 342 NLRB 1105, 1106 (2004). Thus, record evidence supports the Judge's findings and conclusions that the Respondent violated Sections 8(a)(1) and (5) of the Act by refusing to provide the Union with the names of the witnesses who participated in the Respondent's investigation wherein an employees was terminated.

Additionally, in his decision, the Judge concluded that the Respondent failed to meet its burden of establishing that the Union no longer had any need for the witness names. The Judge found that, even though the arbitration hearing regarding the grievance concerning Williams' termination had been held, the Respondent had not established that: (1) the arbitrator had issued a decision; (2) no appeal has been taken from any such decision; and (3) the arbitrator had no authority to reopen the matter. The Judge cited Borgess Medical, supra, in which the Board

relieved an employer of the obligation to provide unlawfully withheld information sought in connection with a grievance. The Board, specifically, relied on the fact that, not only had the arbitration been held, but that the arbitrator had already issued a decision and no appeal was taken from that decision. The Judge also found that the Union still needs the information in order to evaluate how to proceed regarding the pending grievance, and to possibly represent Employees Williams in an appeal, make a request for reopening of the arbitration hearing, or other avenue that either party may choose to pursue before or after the arbitrator's decision (Decision, p. 11, l. 16-47).

C. The Judge Correctly Concluded That Respondent Violated Sections 8(a)(1) and (5) of the Act By Delaying in Providing the Union with the Dates of Employee Interviews.

In its exceptions, the Respondent argues that the Judge erroneously implied that the Respondent harbored some nefarious intent when it failed to provide the Union with the dates of the employee interviews in a timely manner. The Respondent also argues that the Union was not prejudiced by the delay.

Despite the Respondent's arguments, the Judge correctly concluded that the Respondent violated Sections 8(a)(1) and (5) of the Act by providing the Union with the dates of employee interviews in an untimely manner (Decision, p. 9, l. 24-30). In support of his conclusion, the Judge found that the Union requested the dates of the employee interviews on April 16, 2018. However, the Respondent failed to provide that information until 2.5 months later on July 2, 2018 (Decision, p. 9, l. 40-47). In his decision, the Judge cited Dodge of Naperville Jeep/Dodge, 357 NLRB 2252 (2 months); Woodland Clinic, 331 NLRB 735, 737 (2000) (7 weeks); House of the Good Samaritan, 319 NLRB 392 (1995) (2.5 months); Bundy Corp., 292 NLRB 671, 672(1989) (6 weeks), in which the Board has held that, where the information requested by a

union is not voluminous or difficult to gather, delays of 2.5 months or less are unreasonable and violate the Act. The Judge also found that, even though the Respondent argued that the delay was unintentional and was not shown to have resulted in prejudice to the union, Board law does not require either improper intent or prejudice to establish a violation (Decision, p. 10, l. 1-25).

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

IV. CONCLUSION

For the above-stated reasons, the Counsel for the General Counsel respectfully requests that the Respondent's exceptions be denied in their entirety and that the Administrative Law Judge's Decision be affirmed and his recommended order adopted.

DATED at Indianapolis, Indiana, this 7th day of May 2019.

Respectfully submitted,

/s/ Raifael Williams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION was filed with the Executive Secretary electronically and was electronically served upon the following person on this 7th day of May 2019:

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