

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Judges**

**KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP**

and

Case 21-CA-224219

NATIONAL UNION OF HEALTHCARE WORKERS

**BRIEF OF COUNSEL FOR THE GENERAL COUNSEL
To the Honorable Jeffrey P. Gardner, Administrative Law Judge**

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUES PRESENTED.....2

III. STATEMENT OF FACTS.....3

 A. Respondents’ Relationship and Operations.....3

 B. Union Representation at Respondents’ Facilities.....4

 C. Psychiatric RN Tarina Marie is Terminated for Violating Policy NATL.HR.010
.....4

 1. *NATL.HR.010 – License, Certificate, and Registration Verification*.....4

 2. *Tarina Marie’s Termination*.....7

 D. Respondents Did Not Provide and Delayed in Providing Information Requested
by The Union to Process Tarina Marie’s Grievance9

 1. *The Union Files a Grievance on Behalf of Tarina Marie and Requests
Information to Process the Grievance*.....9

 2. *Respondents Did Not Provide Corrective-Action Cases Involving NUHW
Members Who Have Worked on An Expired License*.....11

 3. *Respondents Did Not Provide Corrective-Action Cases Involving UNAC
or Other Nursing Union Members Who Have Worked on An Expired
License*.....14

 4. *Respondents Did Not Provide Corrective-Actions Directly Related to
Tarina Marie’s Case Regarding Management Discipline/Disciplinary
Action Documentation for Any Managers Related to This Case*.....15

 5. *Respondents Delayed for a Period of Six Months in Providing Corrective-
Action Notes Relating to Tarina Marie*.....17

 E. Testimony of Respondents’ Witnesses and Respondents’ Counsel’s Statements....
.....19

 1. *Testimony of James Czaja, HR Consultant*.....19

 2. *Respondents’ Counsel’s Statements on the Record*.....21

 3. *Testimony of James Busalacchi, Senior Labor Relations
Representative*.....22

IV.	ARGUMENT.....	23
A.	Respondents Violated Section 8(a)(1) and (5) of the Act by Refusing to Provide Corrective-Action Cases Involving NUHW Members Who Have Worked on An Expired License.....	23
1.	<i>The Information Requested is Presumptively Relevant.....</i>	23
2.	<i>Respondents Have Not Raised a Valid Objection.....</i>	24
B.	Respondents Violated Section 8(a)(1) and (5) of the Act by Refusing to Provide Corrective-Action Cases Involving UNAC or Other Nursing Union Members Who Have Worked on An Expired License.....	26
1.	<i>The Union Has Established the Relevance of This Request.....</i>	26
2.	<i>Respondents Have Not Raised a Valid Objection.....</i>	30
C.	Respondents Violated Section 8(a)(1) and (5) of the Act by Refusing to Provide Corrective-Actions Directly Related to Tarina’s Case Regarding Management Discipline/Disciplinary Action Documentation for Any Managers Related to This Case.....	34
1.	<i>The Union Has Established the Relevance of This Request.....</i>	34
2.	<i>Respondents Have Not Raised a Valid Objection.....</i>	39
D.	Respondents Violated Section 8(a)(1) and (5) of the Act by Delaying for a Period of Six Months in Providing Corrective-Action Notes Relating to Tarina Marie.....	40
1.	<i>The Union Has Established the Relevance of This Request.....</i>	40
2.	<i>Respondents Have Failed to Timely Furnish the Requested Information.....</i>	41
V.	CONCLUSION.....	44
VI.	REMEDY.....	45

TABLE OF AUTHORITIES

Federal Cases

Curtiss-Wright Corp. v. NLRB, 347 F.2d 61, 67 (3d Cir. 1965)27

Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979)23

NLRB v. Acme Industrial Co., 385 U.S. 432 (1967)23, 27, 34, 40

NLRB v. Associated General Contractors of California, 633 F.2d 766 (9th Cir. 1980)27, 34

NLRB v. Leonard B. Hebert Jr. & Co., 696 F.2d 1120, 1123 (5th Cir. 1983)27

NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956)23

San Diego Newspaper Guild Local 95 v. NLRB, 548 F.2d 863 (9th Cir. 1977)27

U.S. Testing v. NLRB, 160 F.3d 14, 21 (1998)26

NLRB Cases

American Signature, Inc., 334 NLRB 880 (2001).....23

Assn. Of D.C. Liquor Wholesalers, 300 NLRB 224 (1990)32, 40

Bacardi Corp., 296 NLRB 1220 (1989)23

Bohemia, Inc., 272 NLRB 1128, 1129 (1984)27

Blue Diamond Co., 295 NLRB 1007 (1989)27

Contract Carriers Corp., 339 NLRB 851, 858 (2003)24

Disneyland Park, 350 NLRB 1256, 1257 (2007)26

Earthgrains Co., 349 NLRB 389 (2007), enfd. in pt., denied in pt. sub nom. *Sara Lee Bakery Group, Inc. v. NLRB*, 514 F.3d 422 (5th Cir. 2008)26-27

E.I. Du Pont de Nemours and Co., 366 NLRB No. 178 (2018)35, 37, 38, 39

Gloversville Embossing Corp., 314 NLRB 1258 (1994)42

Goodyear Atomic Corp., 266 NLRB 890 (1993)25, 33

Holiday Inn on the Bay, 317 NLRB 479 (1995)31, 32, 39-40

House of Good Samaritan, 319 NLRB 392, 398 (1995)42

L.I.F. Industries a/k/a Long Island Fire Proof Door, 366 NLRB No. 4 (2018)24, 41, 42

<i>Mary Thompson Hospital</i> , 296 NLRB 1245 (1989)	41
<i>McDonnell Douglas Corp.</i> , 224 NLRB 881, 890 (1976)	30
<i>Ohio Power Co.</i> , 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976).....	24, 43
<i>Pfizer, Inc.</i> , 268 NLRB 916 (1984)	29, 31, 37
<i>Postal Service</i> , 289 NLRB 942 (1988), enfd. 888 F.2d 1568 (1989)	38
<i>Postal Service</i> , 308 NLRB 547 (1992)	42
<i>Postal Service</i> , 310 NLRB 391 (1993)	34, 35
<i>Public Service Co. of New Mexico</i> , 364 NLRB No. 86 (2016)	40, 41
<i>Safeway Stores</i> , 236 NLRB 1126 (1978)	23
<i>Sheraton Hartford Hotel</i> , 289 NLRB 463 (1989)	27
<i>Southern Nevada Builders Assn.</i> , 274 NLRB 350, 351 (1985)	27
<i>Tower Books</i> , 273 NLRB 671 (1984)	26, 33
<i>United-Carr Tennessee</i> , 202 NLRB 729 (1973)	23
<i>United Technologies Corp.</i> , 274 NLRB 504 (1985)	23
<i>U.S. Postal Service</i> , 332 NLRB 635 (2000)	23, 43
<i>U.S. Postal Service</i> , 337 NLRB 820 (2002)	24
<i>West Penn Power Co.</i> , 339 NLRB 585, 587 (2003), enfd. in rel. pt 394 F.3d 233 (4th Cir. 2005)	42
<i>Westinghouse Electric Corp.</i> , 304 NLRB 703, 704 (1991)	28, 29, 34, 35
<i>Woodland Clinic</i> , 331 NLRB 735, 736 (2000)	41
<i>Yeshiva Univ.</i> , 315 NLRB 1245 (1994)	24-25, 26, 33

I. INTRODUCTION

Respondents Kaiser Foundation Hospitals (Respondent Foundation) and Southern California Permanente Medical Group (Respondent Permanente), herein collectively called “Respondents,” work together to provide health-care services to their members and the public throughout Southern California. The National Union of Healthcare Workers (herein NUHW or the Union) has represented Respondents’ Psychiatric registered nurses (RNs) at the various facilities of Respondents throughout the region for almost a decade. The Union and Respondents have a collective-bargaining agreement, effective for the period December 17, 2015, to September 30, 2018, and which agreement has continued in effect after the expiration date to the present date.

The issues in this case are straightforward and indicate clear violations of Section 8(a)(1) and (5) of the Act by Respondents refusing to provide information and delaying in providing information to the Union. This case involves four separate information requests made by the Union when it filed a grievance on behalf of bargaining unit employee Tarina Marie, one of its members, who was terminated for working with an expired nursing license, in violation of Respondents’ policy NATL.HR.010, Respondents’ main policy on licenses and credentials.¹

Since the Union submitted the information request to Respondents, Respondents have failed to furnish the following three relevant information request: 1) “All corrective action cases involving NUHW members who have worked on an expired license”; 2) “All corrective action cases involving UNAC [United Nurses Association of California] or other nursing union members who have worked on an expired license”; and 3) “Any corrective actions directly related to Tarina's case regarding management discipline.”

¹ NATL.HR.010 states, in part, that if an employee permits his or her license to expire and “appropriate current documentation. . . is not obtained and presented. . . the employee is terminated.”

Because these requests are either presumptively relevant or the Union has shown that the documents are relevant to its statutory duty of processing Tarina Marie's grievance, Respondents' continued refusal to provide the requested information to the Union is unlawful. Finally, Respondents delayed in providing the fourth and final relevant information request at issue, "All corrective action notes relating to Tarina Marie," for an unresponsive period of six months, conduct that constitutes an unlawful delay in providing information.

By refusing to provide these three information requests and failing to timely provide the fourth request, Respondents have acted unlawfully in violation of Section 8(a)(1) and (5) of the Act. General Counsel argues that the unfurnished information should be immediately provided to the Union and a notice should be posted to ensure that Respondents will not infringe on the Union's right to represent its members in a timely and comprehensive manner by failing to provide relevant information to the Union.

II. ISSUES PRESENTED

1. Whether Respondents violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with corrective-action cases involving NUHW members who have worked with an expired license.
2. Whether Respondents violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with corrective-action cases involving UNAC [United Nurses Association of California] or other nursing union members who have worked with an expired license.
3. Whether Respondents violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with corrective-action cases directly related to Tarina's Marie's case regarding management discipline/disciplinary action documentation for any managers related to this case.

4. Whether Respondents violated Section 8(a)(1) and (5) of the Act by delaying for a period of six months in providing corrective-action notes relating to Tarina Marie.

III. STATEMENT OF FACTS

A. Respondents' Relationship and Operations²

At all material times, Respondent Permanente has been a California professional partnership engaged in the provision of medical services to health plan members, and the operation of health care clinics; and Respondent Foundation has been a California nonprofit public benefit corporation engaged in the operation of various health care facilities in California, Oregon, and Hawaii. (Jnt. Exh. 1).³

Together, with Kaiser Foundation Health Plan, Inc., a nonprofit health maintenance organization, they provide health-care services to Health Plan members and others at various locations and facilities in Southern California, including a facility named Orchard Medical Offices located in Downey, California, (Downey facility) the only facility involved herein. (Jnt. Exh. 1). Respondents' "Southern Region" stretches from Bakersfield, California, to San Diego, California, and includes the Downey facility. (Tr. 39).

² During the 12-month period ending October 30, 2018, a representative period, Respondent Permanente, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the state of California. (GC Exh. 1(d), 1(n)). During the 12-month period ending October 30, 2018, a representative period, Respondent Foundation, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the state of California. (GC Exh. 1(d), 1(n)).

³ All references to the transcript are noted by "Tr." Followed by the page number(s). All references to Counsel for the General Counsel's (GC) exhibits are noted as "GC Exh." followed by the exhibit number(s). All references to Joint exhibits are noted as "Jnt. Exh." Followed by the exhibit number(s).

B. Union Representation at Respondents' Facilities

The Union represents the Psych-Social Chapter (KPC) at Respondents' facilities, which includes a bargaining unit of licensed clinical social workers, licensed marriage and family therapists, and Psychiatric RNs.⁴ (Tr. 36-37; GC. Exh. 2). The unit consists of about 1750 employees that work in various facilities in Respondents' Southern Region (Tr. 36-38, 40). In total, there are approximately 125 Psychiatric RNs in the KPC unit, with about ten to 20 Psychiatric RNs that work at the Downey facility within the Behavioral Health Unit. (Tr. 38, 252). The Union and Respondents have a collective-bargaining agreement (CBA) covering the KPC unit with a term from December 17, 2015, through September 30, 2018, which will continue from year to year thereafter until a new agreement is reached. (Jnt. Exh 1, Exh. 1). The Union also represents other bargaining units within Respondents, both throughout California and in Hawaii. (Tr. 36-38). While there are some RNs in the Hawaii unit, KPC is the only other bargaining unit represented by the Union that includes the job classification of RN. (Tr. 38-39).

The United Nurses Association of California (UNAC) represents the majority of RNs in Respondents' Southern Region, as well as some pharmacists. (Tr. 39, 176). United Healthcare Workers-West (UHW), another union representing Respondents' employees, represents primarily service-oriented, administrative, and clerical employees. (Tr. 175).

C. Psychiatric RN Tarina Marie is Terminated for Violating Policy NATL.HR.010

1. NATL.HR.010 - License, Certificate, and Registration Verification

NATL.HR.010 is a national policy issued by Respondents' Human Resources (HR) department entitled, "License, Certificate, and Registration Verification," which has been in

⁴ "KPC," the abbreviation used for the unit, stands for "Kaiser Psych-Social Chapter." (Tr. 36).

effect since at least March, 2007. The purpose of this policy is “to ensure that employees maintain all job-required licenses, certifications and registrations [LCRs].” (Jnt. Exh. 1, Exh. 4). There is no dispute that NATL.HR.010 applies to all employees equally, regardless of which union represents them, including employees represented by UNAC. (Tr. 58-59, 172). Both employees and management have a responsibility to ensure that employees maintain updated LCRs because Respondents “[do] not permit employees to work without required LCRs.” (Jnt. Exh. 1, Exh. 4). In this regard, NATL.HR.010, contains the following sections, among others:

1.0 Policy Statement

When [LCRs] are required by law, accreditation standards, or Kaiser Permanente (KP) policy, it is the employee’s responsibility to ensure that the LCRs are valid and current.⁵ KP does not permit employees to work without required LCRs.

5.2 Process of Verification

5.2.4 At the time of renewal for current employees, the applicable KP LCR specialist verifies LCRs with the issuing organization, online, by phone, or by fax.⁶

5.3 Expiration of LCRs

5.3.1 In some regions, employees who have LCRs that are expiring receive a courtesy notification from KP before the expiration date.⁷ It remains an employee's responsibility to maintain current LCR. This notification is to serve as a reminder of his/her responsibility.

5.3.3 Should an employee who is not already on an approved leave permit his/her LCR to expire, even if application for renewal has been made, or if the LCR is suspended, the employee is placed on an unpaid leave or he/she will not be scheduled to work. If appropriate current documentation

⁵ Respondents are also referred to as “Kaiser Permanente,” abbreviated as “KP.”

⁶ Human Resources Consultant James Czaja testified that an LCR specialist ensures that LCRs are maintained and updated for Respondent’s Downey facility. (Tr. 190). Currently, the LCR specialist is a project manager who “has a number of roles, and this is one of his responsibilities.” (Tr. 189). While Czaja characterized the LCR specialist as a “project manager,” Czaja also stated that the LCR specialist is not a member of management but is “aware of this [Tarina Marie’s] situation.” (Tr. 189-190).

⁷ Managers at Respondents do in fact give this notification to their employees. For example, Shop Steward and Psychiatric RN Mark Land-Ariizumi testified that, in 2017, his manager notified him that he had to renew his license and warned him that he would be placed on unpaid leave if Land-Ariizumi did not submit proof that his license was renewed. (Tr. 51, 90).

of the LCR is not obtained and presented within the region's/state's specified timeframe, the employee is terminated.⁸

5.3.4 Any manager who knowingly permits an unlicensed person to work for him/her for any reason (including failure to obtain the initial LCR) after the date of expiration, suspension, or revocation of a LCR will be subject to corrective/disciplinary action, up to and including termination.⁹

Aside from placing employees with expired LCRs on unpaid leave and being subject to discipline for knowingly allowing an employee to work with an expired license, NATL.HR.010 also applies to managers in other ways: 1) the policy applies to managers who need to maintain LCRs of their own if they are a registered nurse, psychologist, or therapist; and 2) it applies to managers who are responsible for ensuring that employees' licenses are verified and updated. (Tr.58, 83-84, 182-183; Jnt.Exh.1, Exh. 4). Managers who oversee employees that require LCRs are responsible for keeping records regarding their employees' LCRs up to date. (Tr. 183-84).

During direct-examination, Human Resources (HR) Consultant James Czaja (Czaja) laid out three reasons why Respondents have such a heightened concern for employees maintaining valid LCRs and why NATL.HR.010 is in place.¹⁰ First, he mentioned that there is a liability concern because Respondents are vulnerable to legal action when an employee who requires an updated LCR provides services without a current LCR. Second, he stated that various licensing entities, such as the Joint Commission on Health Care Accreditation and the Department of

⁸ The appropriate timeframe for Southern California is 14 calendar days. (Tr. 86-87). Union Lead Organizer Ben Snyder testified that it is his understanding that the 14-calendar period begins when management verifies that the employees' license has not been renewed, at which point the employee is placed on unpaid leave of absence until the license is renewed; however, if the license is not renewed before the 14 days have passed, the employee is terminated. (Tr. 113-114). During his testimony, Czaja misquoted this section, stating that it calls for termination when an employee works with an expired LCR. (Tr. 216). Administrative Law Judge Gardner corrected him, clarifying that Section 5.3.3 "doesn't make any reference to working. . . ." (Tr. 217).

⁹ Section 5.3.5 also details managerial discipline; however, that section is not relevant to Tarina Marie's case: "**5.3.5** If a manager knowingly permits a person to work with a limited and/or restricted LCR, and the role requires an unlimited or unrestricted LCR, the manager will be subject to corrective/disciplinary action, up to and including termination." (Jnt. Exh.1, Exh 4).

¹⁰ Czaja holds the position of HR Consultant for Kaiser Foundation Health Plan, Inc. and is an admitted agent of Respondents within the meaning of Section 2(13) of the Act. (Jnt. Exh. 1).

Mental Health, review Respondents to evaluate whether they meet their licensing requirements.¹¹

Third, Czaja testified that Respondents receive reimbursement from the federal government for providing certain services, such as Medicare or Medicaid, and if those services are provided by unlicensed employees who are required to maintain updated LCRs, Respondents will be required to return the money received for performing those services.¹² (Tr. 180-181, 254-255, 257).

Given the potential risks that may befall Respondents if an employee works without an active LCR, these reasons explain the detail in NATL.HR.010 regarding managerial oversight in ensuring that employees maintain updated LCRs.

2. Tarina Marie's Termination

On April 16, 2018, Respondents terminated Tarina Marie, an 18-year employee, Psychiatric RN, and member of the KPC bargaining unit who worked at the Downey facility, for working with an expired RN license for a total of nine shifts from March 1 to March 18, 2018. (Tr. 40-41).

Tarina Marie's termination notice details the events leading up to her termination as follows:

“On February 12, 2018, you attempted to update your information with the Board of Registered Nursing on Monday, using a work computer, and generated a print-out from the Board of Registered Nursing's website and placed it under the RN Supervisor's door. However, that document reflects that your RN license continued to have an expiration date of February 28, 2018. Your RN license was not renewed by you until Monday March 19, 2018, after the RN Supervisor informed you that your RN license continued to reflect an expiration date of February 28, 2018. You worked your regularly scheduled shifts from March 1st to March 19th for a total of nine (9) shifts (including March 19th) before your RN license was renewed in the afternoon Monday, March 19, 2018. On

¹¹ Czaja testified that these agencies review Respondents' licensing through primary source verification (PVC) by accessing employees' license information online and checking whether they are valid and whether there has been a gap in the license maintenance. (Tr. 255-256).

¹² Human Resources Consultant James Czaja testified that he is unsure if Respondents have ever had to return any reimbursement funds received from the federal government for performing these services because an unlicensed employee provided them. (Tr. 257). He then testified that Respondents report any occasion where an employee has worked without a current license. (Tr. 257-258).

Thursday, March 27, 2018, you were placed on a paid investigatory suspension.” (Jnt. Exh. 1, Exh. 2).

Tarina Marie was initially suspended on March 27, 2018, and later terminated on April 16, 2018, for having worked with an expired license, even though her license had been renewed as of March 19, 2018.

On April 5, 2018, Respondents conducted an investigatory interview, regarding Tarina Marie. Shop Steward and Union Vice-President Mark Land-Ariizumi (Land-Ariizumi), also a Psychiatric RN himself, represented Tarina Marie at this meeting. (Tr. 44-45). Czaja was also present at this meeting. (Tr. 45). During this meeting, and memorialized in the corrective-action form issued to her upon her termination, Tarina Marie explained that she never would have intentionally worked with an expired license, that she did not know that her renewal had not “gone through” until her RN Supervisor called and informed her about this at work on March 19, 2018, and that the RN Supervisor should have noticed that her license was not renewed, as she is the individual responsible for verifying that licenses are active for her assigned staff. (Jnt. Exh. 1, Exh. 2).

At this meeting, Tarina Marie read her written statement detailing her side of events. (Tr. 46). In that statement, Tarina Marie states, *inter alia*, that she was surprised and confused at learning that the renewal receipt that she had submitted to her Supervisor back in mid-February, 2018, failed to show dates for the current renewal period. (Jnt. Exh. 1, Exh. 6(BB)). She also explained that upon learning this information, she immediately completed the online renewal process again on March 19, 2018, and described problems that she encountered with the website, and the assistance she received from a representative of the support line to complete the renewal process. (Jnt. Exh. 1, Exh. 6(BB)). Tarina Marie submitted her written statement to

management at the April 5 meeting. She was then subsequently terminated on April 16, 2018.

(Jnt. Exh. 1, Exh. 6(BB)). Tarina Marie's April 16 termination notice states the following:

"You acknowledged that you were well aware of organizational policy NATL.HR.010 governing the Verification of License, Certificates and Registrations. Based on the outcome of the investigation, the Employer has determined that you violated basic Kaiser Permanente employment policies which clearly state that you are responsible for following all professional licensing and certification requirements that apply to you. As a Psychiatric RN, you are required to maintain active license as are (sic) requirement of your position and are not to work with an expired license. Accordingly, your employment with Southern California Permanente Medical Group is terminated effective immediately." (Jnt. Exh. 1, Exh. 6(BB)).

D. Respondents Did Not Provide and Delayed in Providing Information Requested by The Union to Process Tarina Marie's Grievance

1. *The Union Files a Grievance on Behalf of Tarina Marie and Requests Information to Process the Grievance*

On April 17, 2018, the Union filed a grievance on behalf of Tarina Marie regarding her termination. (Tr. 59). The grievance was prepared by Land-Ariizumi who submitted it in an email to Czaja, which also requested dates to hold a grievance meeting within 10 calendar days.

(Jnt. Exh. 1, Exh. 6(A)). In the grievance form, the Union requested the following information,

inter alia:

- All corrective action cases involving NUHW members who have worked on an expired license;
- All corrective action cases involving UNAC or other nursing union members who have worked on an expired license;
- Any corrective actions directly related to Tarina [Marie's] case regarding management discipline; and
- All corrective action notes relating to Tarina Marie." (Jnt. Exh. 1, Exh. 5).

Between April 17, and October 18, 2018, the Union and Respondents corresponded exclusively via email regarding the information requests. (Jnt. Exh. 1, Exh. 6(A)-(DD)).

Virtually all emails involved communications between Czaja (on behalf of Respondents) and Land-Ariizumi and Lead Organizer Ben Snyder (on behalf of the Union). Snyder assisted Land-Ariizumi in responding to Czaja's responses to the information requests. (Tr. 93). The parties did not have any phone or in-person conversations regarding the information requests. (Tr. 67, 68, 151, 221; Jnt. Exh. 1, Exh. 6(A)-(DD)).

Although the parties exchanged initial emails in which they attempted to schedule a grievance meeting, no such meeting was ever held due to Respondents' refusal to provide the information requested by the Union. (Tr. 67). For instance, in an April 19, 2018, email to Respondents, Snyder wrote that "[the Union] will need to have [its] information requests (which are critical to making [its] case) satisfied before any actual meeting takes place." (Jnt. Exh. 1, Exh. 6(F)). To this day, the grievance remains in abeyance due to Respondents' failure to provide the information. (Tr. 67).

On April 20, 2018, Czaja emailed Snyder stating that he had begun working on the information requests and would hopefully have some information by the end of the following week. (Jnt. Exh. 1, Exh. 6(F)). On April 24 and April 27, 2018, Snyder again emailed Czaja asking when the information would be provided and when Czaja would have a response to the information request. (Jnt. Exh. 1, Exh. 6(H) and 6(K)).

On May 8, 2018, for the first time, Czaja asked the Union a few questions regarding the requested information. (Tr. 68). In particular, Czaja asked the Union to clarify its request for "Any corrective actions directly related to Tarina's case regarding management discipline." (Jnt. Exh. 1, Exh. 6(M)). In response, Land-Ariizumi stated that this request was in regard to Sections 5.3.4 and 5.3.5 of NATL.HR.010. (Jnt. Exh. 1, Exh. 6(N)). Czaja then asked what Land-Ariizumi meant by "any documents directly related to Tarina's case." (Jnt. Exh. 1, Exh. 6(O)).

Land-Ariizumi replied, “Any corrective/disciplinary action documentation for any managers related to this case.” (Jnt. Exh. 1, Exh. 6(P)). Czaja responded in a May 8, 2018, email, “Thank you, this is helpful. I hope to have the full response and information available for pick up by the end of this week or early next week.” (Jnt. Exh. 1, Exh. 6(Q)). However, as discussed below, Respondents never provided the first three items of information requested by the Union, and delayed six months in providing the fourth request.

2. Respondents Did Not Provide Corrective-Action Cases Involving NUHW Members Who Have Worked on An Expired License

The Union requested the corrective-actions involving NUHW members who have worked on an expired license to ensure equal treatment under policy NATL.HR.010 and to evaluate whether there were any other terminations resulting from working on an expired license. (Tr. 60). Given the “checks and balances” contained in NATL.HR.010 to ensure that employees do not work with expired LCRs, Land-Ariizumi had never encountered an employee who was terminated for working with an expired license. (Tr. 61). Land-Ariizumi testified that he had concerns that the policy was not being equally applied because Tarina Marie had submitted to her supervisor what she thought was her renewal documentation on February 12, 2018, and it took management over a month to notice the expired status of Tarina Marie’s LCRs on March 19, 2018. (Tr. 60-61).

On May 22, 2018, Czaja emailed a 3-page letter to the Union containing Respondents’ response to the Union’s information requests. Czaja testified that this was the first full response to the information request. (Tr. 203). With respect to the request for “All corrective action cases involving NUHW members who have worked with an expired license,” Czaja simply wrote:

“Kaiser Permanente does not maintain its records in such a fashion as to be able to respond to this request.” (Jnt. Exh. 1, Exh. 6(S)).

In response to Czaja's May 22 letter, Snyder emailed Czaja on June 21, 2018, stating that the Union did not consider the information requests satisfied, and provided detailed explanations for each request. With respect to this item, Snyder wrote:

“The employer maintains records of these corrective actions and the union is requesting that the records be searched and the relevant corrective actions be supplied to the union. These records are necessary and relevant to our investigation of this issue because without them the union cannot properly assess whether the employer's failure to enforce its own policies around credentialing notifications with respect to an NUHW member is unique to this case. The question of equal enforcement/application of employer policy is also implicated here.” (Jnt. Exh. 6, Exh. 6(T)).

Snyder testified that, when he referred to the employer's policies in the above explanation, he specifically meant Sections 5.2.4 and 5.3.3 of NATL.HR.010. (Tr. 123). Snyder further testified that he had concerns that Respondents failed “to enforce [their] own policies around credential notifications with respect to an NUHW member” because Tarina Marie's situation seemed unusual, especially because she was not placed on administrative leave or given time to resolve the situation. Thus, the Union requested this information to examine just-cause issues in Tarina Marie's termination and to evaluate whether this was an isolated incident for Union members and for employees represented by other unions. (Tr. 124, 125, 147).

After not receiving a response from Czaja regarding the explanation above, on July 18, 2018, Snyder emailed Czaja asking for Respondents' position on the outstanding requests, given the clarifications provided by the Union on June 21, 2018. (Jnt. Exh. 1, Exh 6(W)). However, in response Czaja simply stated, “Please see my previous response.” (Jnt. Exh. 1, Exh 6(X)). Snyder replied on July 18, 2018, stating that he had provided additional clarification on why the requested information was necessary and relevant and wrote that if Respondents did not have any additional justification for refusing to provide the items, he would pursue the issue with the NLRB. (Jnt. Exh. 6, Exh. 6(Y)). Czaja then suggested that Snyder look through documents that

Snyder had previously picked up from HR and to explain to Czaja what information the Union was still requesting.¹³ (Jnt. Exh. 6, Exh. 6(Z)). Snyder emailed Czaja on July 20, conveying his confusion about Czaja's last response, summarized the information that had previously been provided by Respondents, and stated that the Union was experiencing undue delay and Respondents were refusing to satisfy the information requests. (Jnt. Exh. 1, Exh. 6(AA)).

Later, in a July 26, 2018, email to the Union, Czaja "endeavored to elaborate" on Respondents' response to the outstanding information requests. (Jnt. Exh. 1, Exh. 6(BB)). With respect to the request for corrective-actions involving NUHW members who have worked on an expired license, Czaja wrote:¹⁴

"...[I]n addition to any privacy concerns and concerns regarding the relevance of Corrective Action documents issued to employees who are not represented by NUHW, these items cannot be physically produced as the Employer does not maintain its records in such a fashion as to be able to respond to this request." (Jnt. Exh. 1, Exh. 6(BB)).¹⁵

Respondents and the Union did not have further discussions regarding this request. At no point did Czaja or any other representative for Respondents explain to anyone at the Union how it maintains these records, what it would take to procure them, or how long it would take to procure them. (Tr. 69). At the hearing, Czaja testified that he did not convey how long it would take to procure the information because no one from the Union asked him (Tr. 238).

¹³ On about June 21, 2018, Snyder picked up some documents from the Human Resources Department responsive to other requests the Union had made, which requests are not at issue in this case. (Jnt. Exh. 1, Exh 6(V)).

¹⁴ In this response, Czaja simultaneously addressed the Union's request for corrective-actions involving NUHW members who have worked on an expired license and the Union's request for corrective-action cases involving UNAC or other nursing union members who have worked on an expired license. (Jnt. Exh. 1, Exh. 6(BB)).

¹⁵ In his testimony at the hearing, Czaja described that this answer was an attempt to give the Union additional information "so that it would resolve any misunderstanding about what [he] meant [in the May 22nd letter]. (Tr. 204). Because Czaja perceived that the Union was under the impression that he was not willing to provide certain information, which was true in the case where he raised a privacy and/or confidentiality concern, he wanted to make it clear that he could not physically produce the information. (Tr. 205). Snyder testified that the addition of the word "physically" did not provide him with any more information. (Tr. 131).

To this day, Respondents have refused to provide any corrective-action cases involving NUHW members who have worked on an expired license. (Tr. 70).

3. Respondents Did Not Provide Corrective-Action Cases Involving UNAC or Other Nursing Union Members Who Have Worked on An Expired License

The Union requested corrective-action cases involving UNAC or other nursing union members who have worked on an expired license to ensure that NATL.HR.010 was being equally applied to RNs represented by UNAC and other nursing units as to the RNs represented by NUHW. (Tr. 62-63). In his response to the Union on May 22, when addressing this request, Czaja wrote:

“The Employer objects to the request on the grounds that it is not necessary and relevant to the grievance as NUHW is not the exclusive representative of ‘other nursing union members’ and does not have the right to view the private disciplinary files of employees who are not represented by NUHW. Furthermore, Kaiser Permanente does not maintain its records in such a fashion as to be able to respond to this request.” (Jnt. Exh. 1, Exh. 6(S)).

In the email Snyder sent to Czaja on June 21, 2018, Snyder provided additional explanation on why this request was necessary and relevant to its grievance regarding Tarina Marie’s termination:

“The employer maintains records of these corrective actions and the union is requesting that the records be searched and the relevant corrective actions be supplied to the union. These records are necessary and relevant to our investigation of this issue because without them NUHW cannot properly assess whether the employer's failure to enforce its own policies around credentialing notifications particularly with respect to Registered Nurses is unique. The vast majority of RNs at Kaiser are not represented by NUHW but the employer's treatment of other nurses is a question of equal enforcement/application of employer policy and very relevant to questions of just cause.” (Jnt. Exh. 6, Exh. 6(T)).

During the hearing, Snyder testified that, as a Union representative, he frequently works with information that might be considered confidential in other circumstances, such as information related to patient care and disciplinary records. (Tr. 136).

In his email sent to the Union on July 26, 2018, with respect to the request for corrective-action cases involving UNAC or other nursing union members who have worked on an expired license, Czaja wrote:

“...[I]n addition to any privacy concerns and concerns regarding the relevance of Corrective Action documents issued to employees who are not represented by NUHW, these items cannot be physically produced as the Employer does not maintain its records in such a fashion as to be able to respond to this request.” (Jnt. Exh. 6, Exh. 6(BB)).

Respondents and the Union did not have further discussions regarding this request. Respondents did not elaborate on their confidentiality concerns or propose an alternative solution. (Tr. 71, 247).¹⁶ At no point did Czaja or any other representative for Respondents explain to anyone at the Union how it maintains these records, what it would take to procure them, or how long it would take to procure them. (Tr. 71, 246).

To this day, Respondents have refused to provide any corrective-action cases involving UNAC or other nursing union members who have worked on an expired license. (Tr. 72)

4. Respondents Did Not Provide Corrective-Actions Directly Related to Tarina Marie’s Case Regarding Management Discipline/Disciplinary Action Documentation for Any Managers Related to This Case

In this case, where an employee received corrective action related to NATL.HR.010, the Union requested the information to ensure that the policy was also being equally applied to any managers related to Tarina Marie’s situation, as per the language in section 5.3.4 of NATL.HR.010. (Tr. 63). Land-Ariizumi explained in his testimony that, in a case where there may be manager responsibility for an employee working with an expired LCR, by requesting this information, he was attempting to uncover if the corresponding corrective action prescribed by NATL.HR.010 was applied equally to the employee and manager in question. (Tr. 88-89).

¹⁶Czaja testified that producing this requested information presented “confidentiality concerns under [Respondents’] confidentiality policy”; however, no confidentiality policy was ever presented on the record. (Tr. 207-208).

When Czaja sent the Union Respondents' response regarding the information requests on May 22, 2018, he simply wrote:

“The Employer objects to this request on the grounds that is not necessary or relevant and on the grounds of privacy and confidentiality.” (Jnt. Exh. 1, Exh. 6(S)).

In his email sent to Czaja on June 21, 2018, Snyder reiterated the information request and expanded on the Union's reasoning for making this request:

“These records are necessary and relevant to our investigation of this issue because without them NUHW cannot properly assess whether the employer is equally and fairly enforcing its own policies around credentialing and responsibility for credentialing verification. KP policy specifies that certain managers also had direct responsibility in this case, and employer's treatment of the managers involved relative to our own member is a question of equal enforcement/application of employer policy and very relevant to questions of just cause.” (Jnt. Exh. 1, Exh. 6(T)).

In his testimony, Snyder confirmed that Tarina Marie is not absolved of her own responsibility to maintain her license simply because a manager receives corrective action (if any manager did, in fact, receive any); however, Snyder further testified that in this “unprecedented” situation, any managerial discipline and the question of whether Respondents adequately enforced their own policies would touch “on some points of just cause. . .” that an arbitrator hearing this case would be interested in examining, especially given the severity of the corrective action given to Tarina Marie. (Tr. 142-144).

In his email to Snyder on July 26, 2018, Czaja also addressed the relevance of the request regarding management discipline and wrote the following:

“Managers are a distinctly separate group of employees from those represented by the Union, with a different set of responsibilities, and as such, information regarding management discipline is not relevant or necessary to the Union's representation of the Grievant in this case. The Union also does not have a right to view confidential records of management employees.” (Jnt. Exh. 6, Exh. 6(BB)).

Again, Snyder testified that, as a union representative, he has access to items that have attached potential privacy concerns under normal circumstances. (Tr. 138).

Respondents and the Union did not have further discussions regarding this request. At no point did anyone from Respondents, including Czaja, ever come to the Union to offer to accommodate their concerns regarding privacy or confidentially or offer any alternative solution for this information request. (Tr. 72).

To this day, Respondents have not provided the Union with any documents responsive to this request. (Tr. 73).

5. Respondents Delayed for a Period of Six Months in Providing Corrective Action Notes Relating to Tarina Marie

During his testimony, Land-Ariizumi clarified that by using the term “corrective-action notes,” he was referring to any notes that included the fact-finding meeting and any notes utilized by management when investigating and determining to terminate Tarina Marie.¹⁷ (Tr. 64).

Land-Ariizumi explained that he requested this information to evaluate whether management treated Tarina Marie fairly in this case; specifically, whether there were any disparaging remarks in management’s notes, and to examine if NATL.HR.010 was followed correctly and thoroughly. (Tr. 63-64).

Additionally, the corrective-action notes would reveal a timeline of interactions between management and Tarina Marie regarding her license in terms of when Tarina Marie believed she

¹⁷ When asked about his interpretation of the phrase “corrective-action notes” utilized in the request for “All corrective action notes relating to Tarina Marie,” Czaja testified that he found the term “corrective-action notes” to mean the notes from all managers who were present at the investigatory meetings held prior to Tarina Marie’s termination. (Tr. 196-198). Czaja described how he attempted to obtain notes from those managers and was surprised to discover that the managers did not have any notes in their possession. (Tr. 198). During the hearing Czaja admitted that, at no point did he write to the Union to inform them that he had contacted the other managers for their notes. (Tr. 235).

updated her license, when management was notified of the status of Tarina Marie's license, and when management notified Tarina Marie regarding the status of her license. (Tr. 65). Land-Ariizumi explained that, during an investigatory meeting held on March 27, 2018, prior to the fact-finding meeting, and after the meeting in an email, he asked Dawn Gillam (Gillam), Director for the Department of Psychiatry in the Downey medical service area, for any investigatory notes that she had that led her to come to the decision to suspend Tarina Marie, as well as the policy that Gillam utilized in making that decision. (Tr. 43, 98; GC Exh. 4).

In his letter sent to the Union on May 22, Czaja wrote the following in response to this information request:

“Information relevant to the investigatory meeting appears in the Corrective Action Level V document. It should be noted that several NUHW representatives were present in the investigatory meeting which preceded Tarina Marie's termination.” (Jnt. Exh. 1, Exh. 6(S)).¹⁸

In response to Czaja's letter, Snyder addressed this information request in the email he sent Czaja on June 21, 2018:

“The union is requesting the employer's own notes and interview questionnaire from the meetings preceding Tarina's termination. These records are necessary and relevant to our investigation of this issue because only the employer possesses them and without them NUHW cannot properly assess whether the investigation was conducted in a thorough and fair manner in line with just cause standards. The union has serious concerns about targeting of and bias toward our member that will be illuminated by these records.” (Jnt. Exh. 6, Exh. 6(T)).

When Czaja sent his supplemental response to Snyder on July 26, 2018, Czaja again asserted that Union representatives were present in all investigatory meetings and “were provided the

¹⁸ At the time of the request, Czaja claims he did not understand the term “corrective-action notes” to include notes made by any human resources representative, i.e. his own notes. (Tr. 198-199). In contrast, when James Busalacchi, Senior Labor Relations Representative for Respondents, was asked about the use of the term, “corrective-action notes” in the information request for “all corrective action notes relating to Tarina Marie,” Busalacchi testified that he understood the term “corrective-action notes” to be “the notes taken during the corrective action process possibly by managers or if an HR consultant was involved in it by . . . then.” (Tr. 168).

opportunity to write down all questions and take their own notes during these meetings.” (Jnt. Exh. 1, Exh. 6(BB)). Czaja wrote that the Corrective Action is directly related to Tarina Marie’s own actions of working with an expired license and all of the information used by the manager in deciding to terminate Tarina Marie is “contained in the Corrective Action Level V document.” (Jnt. Exh. 1, Exh. 6(BB)).

The next time the Union heard from Czaja was on October 17, 2018, when Snyder received an email from Czaja with Czaja’s interview notes attached. (Jnt. Exh. 1, Exh. 6(CC)). Czaja wrote, in part, “. . . in the spirit of full disclosure and an effort to act in good faith, please find attached my notes related to the investigation.” (Jnt. Exh. 1, Exh. 6(CC)). This was the first time Czaja had provided the attached investigation notes, documents that are considered responsive to this request. (Tr. 74). Before this email, neither Czaja nor any other representative from Respondents ever stated to the Union that they had done a search of their records for the information responsive to this request. (Tr. 73). After this email, the Union considers this particular request satisfied. (Tr. 74).

On October 18, 2018, Snyder responded to Czaja’s email and asked, in part, “Can we expect to receive the rest of our information request soon?” (Jnt. Exh. 1, Exh. 6(DD)). The Union did not receive a response from Czaja. (Tr. 74, 126).

E. Testimony of Respondents’ Witnesses and Respondents’ Counsel’s Statements

1. Testimony of James Czaja, HR Consultant

During the hearing, Czaja testified about each of his responses to the four information requests at issue. When discussing the request for “All corrective action cases involving NUHW members who have worked on an expired license” and “All corrective action cases involving UNAC or other nursing union members who have worked on an expired license,” Czaja stated

that Respondents “don’t have it. . . .” (Tr. 210). During the hearing, the questioning had to be paused so Administrative Law Judge Jeffrey Gardner could clarify Czaja’s position regarding whether the corrective-action forms, either for Union or non-Union employees, did not exist or whether they were simply difficult to obtain. (Tr. 211-213). Czaja did admit that Respondents do create corrective-action documents and that the corrective-actions do, in fact, exist. (Tr. 211). Czaja later backtracked and testified that he does not know whether the records exist or not, given that Tarina Marie’s case is very rare; however, Judge Gardner interrupted him and corrected him again, and stated, while terminations due to lapses in licenses are rare, that “wouldn’t make them not exist. . . that would make there be few of them. . . .” (Tr. 213). Czaja agreed. (Tr. 213). Czaja testified that he did not offer to come up with an alternative solution for either of these requests because it would have been in “bad faith” given that, in the end, he felt that he could not produce the requested documents. (Tr. 239, 246).

After taking the time on the record to determine his position on whether the requested corrective-actions exist or not, Czaja attempted to clarify his testimony on Respondents’ position regarding the disciplinary records. He explained that Respondents do not have a system that allows Respondents to search personnel files by cause of termination but that he “presume[d] that there are other records of this nature, [he doesn’t] know how many , and [he] would presume that they’re very few. . . .” (Tr. 214). He testified that he did not convey this to the Union. (Tr. 246).

As for the information request regarding management discipline in connection with Tarina Marie’s case, aside from the confidentiality issues raised while communicating with the Union, he claimed that there was no “practical way of producing the information” in any case even though he states there is only one manager involved. (Tr. 242, 248). At the hearing, when

asked if he communicated the fact that there was only one manager involved in this case, despite the fact that the request was clarified on May 8, 2018, to “any corrective/disciplinary action documentation for any *managers* [emphasis added] related to this case,” Czaja said “the Union already knew that.” (Tr. 242; Jnt. Exh. 1, Exh. 6(S)).

2. Respondents’ Counsel’s Statements on the Record

Respondents’ counsel confirmed on the record that there were no documents responsive to the following paragraph contained in the identical subpoenas sent to Respondent Permanente and Respondent Foundation prior to the hearing: Paragraph 11, “For the period April 17, 2018 to the present, documents showing that Respondent Permanente and/or Respondent Foundation provided the Union with the following information requested by the Union. . . including any documents . . . showing when and how the information was provided to the Union: (a) all corrective action cases involving NUHW members who have worked on an expired license.” (Tr. 15-16). Respondents’ counsel then explained that, with respect to Paragraph 11(a), Respondents conducted a search and there were no responsive documents. (Tr. 16).

Later in her opening statement, Respondents’ counsel claimed that “the response [to this information request] was that no information responsive to that request existed.” (Tr. 29). When Judge Gardner was confused about Respondent’s position on this request, Respondents’ counsel stated that “there was no discipline. . . to produce and therefore did not produce.” (Tr. 28). This response is in direct conflict with Czaja’s testimony that he believes that responsive documents may exist, there would simply be few of them and they would be difficult to obtain, and contravenes Czaja’s claim that a search was never conducted. (Tr. 211-213, 238).

Respondents’ counsel then confirmed on the record that there were no documents responsive to the following paragraph contained in the pre-hearing subpoenas: Paragraph 11, “For

the period April 17, 2018 to the present, documents showing that Respondent Permanente and/or Respondent Foundation provided the Union with the following information requested by the Union. . . including any documents . . . showing when and how the information was provided to the Union: (b) all corrective action cases involving UNAC or other nursing union members who have worked on an expired license. . . .” (Tr. 15-16).

Respondents’ counsel then stated that Respondents were not aware of any responsive documents, and to provide them would be unduly burdensome. Despite this claim that Respondents were not aware of any responsive documents, Respondents’ counsel later averred that Respondents have “no way of. . . identifying [the applicable] employees. . . .,” indicating that Respondents did not conduct a search and, therefore, would not have been aware as to whether or not there are responsive documents. (Tr. 24).

3. Testimony of James Busalacchi, Senior Labor Relations Representative

James Busalacchi, Senior Labor Relations Representative for Respondents, testified that when Respondents receive a response requesting records of other employees, the HR Department will maintain that Respondents do not have the ability to respond to the request due to the fact that there is no way to search for disciplines of employees, and they are not maintained electronically. (Tr. 165, 169). Busalacchi testified that, due to the way Respondents store disciplinary records, he believed that Human Resources would be required to review a voluminous number of personnel files and, therefore, he never contacted the appropriate HR directors to begin manually searching for these records requested by the Union in this case. (Tr. 163, 172). He did not testify that he communicated any of this to the Union. (Tr. 159-173).

IV. ARGUMENT

A. Respondents Violated Section 8(a)(1) and (5) of the Act by Refusing to Provide Corrective-Action Cases Involving NUHW Members Who Have Worked on An Expired License

1. *The Information Requested is Presumptively Relevant*

Under the Act, when a union requests information that is potentially relevant and that would be necessary and useful to the union in discharging its statutory responsibilities as the exclusive bargaining representative, an employer is obligated to furnish that information. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153 (1956). See also *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). The test for whether information is relevant is a liberal “discovery-type standard.” *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Since there is a broad discovery-like standard to measure relevance, even potential or probable relevance is sufficient to give rise to an employer’s obligation to provide requested information. *U.S. Postal Service*, 332 NLRB 635, 636 (2000). Necessity is not a guideline itself but, rather, is directly related to relevancy, and only the probability that the requested information will be of use to the labor organization need be established. *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989).

One of a union’s statutory duties includes the processing of grievances. *American Signature, Inc.*, 334 NLRB 880, 885 (2001). The Board has held that an employer is obligated to furnish information requested by a union for the purpose of handling grievances. *United-Carr Tennessee*, 202 NLRB 729, 731 (1973); *Safeway Stores*, 236 NLRB 1126, 1128 (1978). Furthermore, the requested information does not need to “clearly dispose of the grievance.” *United Technologies Corp.*, 274 NLRB 504, 506 (1985). Lastly, the Board will not pass on the merits of the grievance underlying the information request, and the union is not required to

demonstrate that the information sought is accurate, nonhearsay, or even ultimately reliable. *U.S. Postal Service*, 337 NLRB 820, 822 (2002).

The Board has long held that information pertaining to the bargaining unit is presumptively relevant and no showing of relevance is required. *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976). As to presumptively relevant requests, the employer has the burden of proving the lack of relevance. *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003). As for the union, “there is no burden on the part of the Union to prove the relevance of or explain the need for this type of presumptively relevant information.” *L.I.F. Industries a/k/a Long Island Fire Proof Door*, 366 NLRB No. 4, slip op. at 6 (2018).

The request for corrective-action cases of NUHW members who have worked on an expired license is presumptively relevant as it is narrowly tailored solely to NUHW members and directly pertains to the bargaining unit, thereby satisfying the liberal standard of relevance the Board requires. While the Union is not required to prove the relevance of this request, this requested information is clearly useful to evaluate whether the policy used to justify the grievant’s termination has been similarly enforced within its own bargaining unit. Land-Ariizumi testified that he had never observed Respondents terminate an employee for working with an expired license before and the situation caused Snyder to question whether Tarina Marie had experienced some issues with just cause. In fact, Respondents do not contest the relevance of this information. Therefore, the Union is entitled to the presumptively relevant information.

2. Respondents Have Not Raised a Valid Objection

Because the Union established the relevance of the information, the burden now shifts to Respondents “to establish that the information is not relevant, does not exist, or for some other valid and acceptable reason cannot be furnished. . . .” *Yeshiva Univ.*, 315 NLRB 1245, 1248

(1994). By their own admission, Respondents have failed to provide this information to the Union because they claim they do not store corrective-actions they issue to employees in an accessible manner. Both Czaja and Busalacchi described the burdensome process Respondents would have to undergo in order to produce the information, but they failed to raise a defense or make an offer to satisfy the information request in another way.

If an employer declines to provide relevant information on the ground that it would be unduly burdensome to do so, the employer must not only seasonably raise this objection, but also must substantiate its defense. *Goodyear Atomic Corp.*, 266 NLRB 890, 891 (1993). General Counsel does not deny that Respondents would have to conduct a search to procure the requested information; however, the testimony and evidence definitively show that neither Czaja nor any other representative for Respondents ever described the process of procuring these disciplinary records for the Union in any form. Czaja merely wrote that “Kaiser Permanente does not maintain its records in such a fashion as to be able to respond to this request,” expanding this response later to “. . . these items cannot be physically produced as the Employer does not maintain its records in such a fashion as to be able to respond to this request.”

In no way do these responses communicate the effort and time that would be invested by Respondents to procure the information. Respondents may argue that the Union failed to follow-up and ask their own questions about the process; however, it is not the Union’s responsibility to do so. Moreover, the record illustrates that, until well into the hearing, Czaja himself was unclear as to what Respondents’ position was regarding whether these records exist or if they are simply difficult to acquire. While he continuously maintained that the records did not exist, Czaja eventually admitted that the records did, in fact, exist; he claimed that they are simply problematic to access and present in response to the information request.

Assuming *arguendo* that Respondents did validly raise their overburdensome objection, Respondents still failed to uphold their duties under Section 8(a)(5) of the Act. When an employer raises a defense alleging that an information request is overburdensome, the employer must bargain with the union over some accommodation for the request, such as who will bear the costs. *Tower Books*, 273 NLRB 671 (1984); *Yeshiva Univ.*, supra at 1249. The union need not propose alternatives to providing the relevant information. *U.S. Testing v. NLRB*, 160 F.3d 14, 21 (1998). Czaja's responses do not contain any offers to work with the Union to reach an acceptable accommodation. Czaja testified multiple times that he did not make any alternate proposals as he believed it would be a "bad faith discussion," given Respondents' position that there was no clear practice to procure the requested documents. Czaja's belief that discussing the information request would be disingenuous does not relieve Respondents of their duty to offer to cooperate with the Union to reach a mutually acceptable accommodation.

Therefore, Respondents have failed to present a valid defense and have refused to provide all corrective-action cases involving NUHW members who have worked on an expired license, in violation of Section 8(a)(5) of the Act.

B. Respondents Violated Section 8(a)(1) and (5) of the Act by Refusing to Provide Corrective-Action Cases Involving UNAC or Other Nursing Union Members Who Have Worked on An Expired License

1. *The Union Has Established the Relevance of This Request*

Unlike the previous request, the request for corrective-action cases involving UNAC or other nursing union members who have worked on an expired license is not presumptively relevant. Where the requested information pertains to matters outside of the bargaining unit or not directly related to the bargaining unit, the requesting party must establish the relevance and necessity for such information. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Earthgrains*

Co., 349 NLRB 389 (2007), enfd. in part and denied in part sub nom. *Sara Lee Bakery Group, Inc. v. NLRB*, 514 F.3d 422 (5th Cir. 2008). In the instant case, because this information request concerns employees outside the bargaining unit, the Union must establish the relevance and necessity for this information. As set forth below, the Union has indisputably met its burden.

When the requested information concerns nonunit employees, to satisfy the burden of showing relevance, the requesting party must offer more than a mere suspicion for it to be entitled to the requested information. *Sheraton Hartford Hotel*, 289 NLRB 463, 464 (1989), citing *Southern Nevada Builders Assn.*, 274 NLRB 350, 351 (1985). See also *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984). The duty to disclose information concerning nonunit employees will be triggered by a showing that the requesting party has a reasonable basis for requesting the information. *NLRB v. Leonard B. Hebert Jr. & Co.*, 696 F.2d 1120, 1123 (5th Cir. 1983); *Blue Diamond Co.*, 295 NLRB 1007 (1989). A union is not required to assemble a prima facie case; rather, whether there is a reasonable basis for further investigation depends on the particular facts of each case. See *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863, 867-868 (9th Cir. 1977); *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 67 (3d Cir. 1965). In fact, a union must only show that the information requested is “‘reasonably calculated to lead to the discovery of admissible evidence.’” *NLRB v. Associated General Contractors of California*, 633 F.2d 766, 771 fn. 6 (9th Cir. 1980). See also *NLRB v. Acme* at 433 (1967).

In this case, the record is clear that NATL.HR.010, the policy that governs LCRs and provides discipline to employees who work with expired licenses, applies to all employees who work for Respondents, regardless of which union represents them. The Union requested the records of employees represented by other nursing unions in order to evaluate whether NATL.HR.010 had been uniformly enforced for all employees, irrespective of union

representation, to determine whether its own member had experienced disparate treatment. When rules apply to all employees in a facility, the Board has repeatedly ruled that unions are entitled to view the work records of nonunit employees.

In *Westinghouse Electric Corp.*, the Board found that the charging party-union was entitled to the information request for the names and discipline records of all employees who had been disciplined subject to a certain facility-wide rule banning fighting, horseplay, or other disorderly conduct. 304 NLRB 703, 704 (1991). In that case, the union, which represented approximately 700 of the 2600 employees working at the facility in question, filed a grievance on behalf of one of its members who was discharged for allegedly engaging in disorderly conduct. *Ibid.* Given that a supervisor was also involved in the incident and was not subject to any discipline, the union asserted that the rule had not been equally enforced and requested the names of and the disciplinary action taken against all employees, unit and nonunit, who had violated the rule in question. *Ibid.*

The Board in *Westinghouse Electric Corp.* then stated that when a rule is “equally applied to all of [an employer’s] employees . . . [it gives] the union a reasonable basis to believe that the disciplinary records of all of the [employer’s] nonunit employees would be of use to the [union] in deciding whether to proceed to arbitration on [the employee’s] grievance or in the arbitration process itself.” *Id.* at 708. Specifically, the disciplinary records of nonunit employees would “lead to the discovery of evidence which would have some bearing on [the employee’s] grievance, namely, the manner in which [the respondent-employer] had applied to other personnel (nonunit as well as unit) who were expected to obey the rule, but like [the employee] had violated it.” *Ibid.*

Similarly, in *Pfizer, Inc.*, two employees, represented by separate unions, were involved in a fight at work and were terminated for violating multiple plant-wide rules. 268 NLRB 916 (1984). The charging party-union filed a grievance on its member's behalf, requesting multiple documents concerning the other involved employee's work record and documents concerning all employee fights on employer property for a certain time period. *Id.* at 917. The Board ruled that the other employee's work record and the documents concerning other employee fights "are relevant to a determination as to whether the [respondent-employer], in taking into account past work performance, has treated like cases in a like manner, or whether there has been disparate treatment." *Id.* at 919.

Like the unions in both *Westinghouse Electric Corp.* and *Pfizer, Inc.*, the Union in the instant case, which does not represent the entire community of RNs that work for Respondents, filed a grievance on behalf of one of its members who had been terminated under a policy that applies to all RNs, regardless of their union representation. The Union has requested information concerning employees outside its bargaining unit to examine whether Respondents have "treated like cases in a like manner or whether there has been disparate treatment." *Pfizer, Inc.*, *supra* at 919. The Union here is within its rights to determine whether or not its member has experienced disparate treatment by comparing similar corrective-actions of other similarly situated employees.

While Czaja testified that Tarina Marie was terminated solely for the fact that she allowed her license to lapse, this does not relieve Respondents of their duty to provide the requested information to the Union, nor does it negate the Union's justifications regarding the relevance of its request. The record clearly shows that the Union requested the corrective-action records of UNAC members and other nursing union members to evaluate whether the licensing

policy was equally enforced for all employees. Additionally, the Union conveyed this reasoning to Respondents during the time the parties were communicating about the information requests, when Snyder explained the Union's reasoning for making this request in his email to Czaja on June 21, 2018.

Based on the above, the Union in this case has satisfied its burden of establishing the relevance of its request for all corrective-action cases involving UNAC or other nursing union members of Respondents who have worked with an expired license and is entitled to the requested information.

2. Respondents Have Not Raised a Valid Objection

It is anticipated that Respondents will raise multiple defenses as to why they are not obligated to furnish this relevant requested information, the first being the confidential nature of nonunit employees' disciplinary records. While the Union and Czaja were corresponding about the information requests, Czaja asserted that the Union does not have the right to view confidential files of employees outside its bargaining unit. The Board has stated that the party that raises a claim of confidentiality has the burden of proof. *McDonnell Douglas Corp.*, 224 NLRB 881, 890 (1976). Czaja testified that to provide these records to the Union would be a violation of Respondents' confidentiality policy; however, no such confidentiality policy was produced or presented on the record.

Respondents' confidentiality assertions fail on multiple accounts. While Czaja communicated with the Union regarding the information requests, he did not refer to a confidentiality policy; he merely claimed the Union had no right to view the records of other employees. In this case, the Union has a right to view the disciplinary records of employees represented by other unions because the Board has consistently ruled that "in order to determine

whether rules have been applied evenhandedly it is necessary to compare the employment history of employees disciplined for the same rule violations,” specifically when rules “apply to all of the [facility’s] employees, regardless of bargaining unit.” *Pfizer, Inc.*, 268 NLRB at 918-919. Furthermore, if the grievance proceeds, “arbitrators routinely consider employee work records in deciding whether employers have applied their disciplinary rules in a consistent, evenhanded, and nondiscriminatory manner.” *Id.* at 919. Given that NATL.HR.010 applies to all employees regardless of union representation, the Union is entitled to compare the disciplinary records of other employees to the record of its own member and Respondents’ confidentiality argument in this respect fails.

Czaja then brought up Respondents’ confidentiality policy for the first time during his testimony. However, even if the aforementioned confidentiality policy was provided, the Board has held that “the statutory policy favoring information disclosure for grievance processing cannot be held hostage to particular individuals employers’ determinations of what is and what is not confidential.” *Holiday Inn on the Bay*, 317 NLRB 479, 482 (1995). In *Holiday Inn on the Bay*, the Board affirmed the administrative law judge’s ruling that the charging party-union was entitled to the disciplinary records of other employees, which included nonunit and supervisory employees, as they were relevant to the processing of the grievances for two unit employees who had been terminated, despite the respondent-employer’s defense that its own confidentiality policy precluded it from providing the union with the requested records. *Id.* at 482.

The administrative law judge rejected this confidentiality argument in two ways: he first wrote that “an employer’s desire to shield information from disclosure on the basis of confidentiality cannot suffice to preclude disclosure which promotes statutory policies,” elaborating that providing information to a union in order to examine comparable infractions

promotes the statutory policy of collective bargaining. *Holiday Inn on the Bay*, supra at 482. Second, the judge stated that the record did not show that employees or supervisors “expect[ed] disciplinary records to remain confidential, that [the respondent-employer] [had] made a commitment to them to maintain confidentiality of disciplinary records,” or that any individual employee had ever made a request to the respondent-employer to abstain from revealing his or her discipline records *Id.* at 482-483.

As with the respondent-employer in *Holiday Inn on the Bay*, any existing confidentiality policy in the instant case does not preempt Respondents’ obligation to provide the Union with the disciplinary records of nonunit employees. Furthermore, Respondents did not present any evidence that shows that employees expect that their disciplinary records will remain confidential, such as individually-signed confidentiality policies. Consequently, Respondents’ internal confidentiality policy does not prevent Respondents from complying with the Union’s request.

Finally, when an employer raises an objection of confidentiality, it must explain why the information is confidential and then come forward with some offer to accommodate its confidentiality concerns. *Assn. Of D.C. Liquor Wholesalers*, 300 NLRB 224, 229 (1990). At no point in his correspondence with the Union did Czaja ever propose an accommodation, such as by providing redacted corrective-actions or insisting on a nondisclosure agreement. Therefore, Respondents have not satisfied this burden of proof regarding their confidentiality defense, and the Union is entitled to the corrective-actions of nonunit employees.

It is anticipated that Respondents will claim that, even if the requested information did not have issues with confidentiality, obtaining the information is overburdensome. As with the request for corrective-actions of NUHW members who worked with an expired license,

Respondents' witnesses testified about the process of searching for employee discipline records, whether they be unit or nonunit employees. General Counsel does not dispute that this request would require a search of their records on the part of Respondents; however, Respondents' witnesses admitted that they never conveyed the process of obtaining the records to the Union, as was required by the Board in *Goodyear Atomic Corp.* 266 NLRB at 891.

Czaja utilized the same language that he used for the previous request when he wrote that "Kaiser Permanente does not maintain its records in such a fashion as to be able to respond to this request," later expounding on this response in his July 26th email when he wrote ". . . these items cannot be physically produced as the Employer does not maintain its records in such a fashion as to be able to respond to this request." Again, this language is not an adequate response to justify the defense that the request is overburdensome.

However, even if Respondents had validly raised this objection, they failed to offer to find an alternative solution, such as narrowing the request, to accommodate the Union's request. *Tower Books*, 273 NLRB 671 (1984); *Yeshiva Univ.*, 315 NLRB at 1249. Czaja testified that he felt that engaging in any discussion about alternative solutions would be in "bad faith," especially given the confidentiality concerns. Czaja's written responses relaying how Respondents maintain their records and his reasoning for why he did not engage in a conversation with the Union about an alternative solution for the information do not fulfill Respondents' burden of establishing a good-faith objection that the request is overburdensome, nor does it amount to an offer of accommodation.

Summarily, Respondents have not established a valid defense and have continued to refuse to furnish all corrective-action cases involving UNAC or other nursing union members who have worked on an expired license, in violation of Section 8(a)(5) of the Act.

C. Respondents Violated Section 8(a)(1) and (5) of the Act by Refusing to Provide Corrective-Actions Directly Related to Tarina’s Case Regarding Management Discipline/Disciplinary Action Documentation for Any Managers Related to This Case.

1. *The Union Has Established the Relevance of This Request*

As with the previous request, this request for managerial corrective-actions is not presumptively relevant as it does not directly pertain to the bargaining unit. Because this information request again concerns employees outside the bargaining unit, the Union here must establish the relevance and necessity for this information by showing that it is “reasonably calculated to lead to the discovery of admissible evidence.” *NLRB v. Associated General Contractors of California*, 633 F.2d at fn. 6;. See also *NLRB v. Acme*, 385 U.S. at 433. As set forth below, the Union has met its burden.

Requesting the disciplinary records of supervisors is not an unusual request; the Board has dealt with these types of requests before and has consistently ruled that a requesting union is entitled to this information if it can meet its burden of proving its relevance. As discussed above, the Board in *Westinghouse Electric Corp.* determined that the charging party-union was entitled to the names of all employees disciplined subject to the plant-wide rule banning fighting, including that of any applicable supervisors. 304 NLRB at 704.

In *Postal Service*, the charging-party union filed a grievance on behalf of two employees who were disciplined subject to a facility-wide attendance policy, and requested the timecards of two supervisors who had attendance issues of their own to highlight any disparate treatment as the charging party-union processed the employees’ grievances. 310 NLRB 391, 392 (1993). The Board found that the union met its burden of showing probable relevance through a logical basis, because unit employees and supervisors were subject to the same rules on attendance and

tardiness, and through a factual basis, as various union officials had personally seen the supervisors arrive late on numerous occasions, and, thusly, determined that the union was entitled to the supervisors' time cards. *Postal Service*, supra at 392.

In *E.I. Du Pont de Nemours and Co.*, the Board found that the charging party-union was entitled to its request for disciplinary records of five supervisors who had committed safety violations, when made pursuant to a grievance filed for a member terminated for past discipline issues and for falling asleep on the job. 366 NLRB No. 178, slip op. at 3 (2018). While the termination did not specifically reference safety violations, the Board reversed the administrative law judge, who found that the grievant was not terminated due to safety violations and the supervisory records were not relevant. *Id.* slip op. at 4. In its decision, the Board determined that, among other reasons, the charging party-union "had a reasonable basis for its information request" because the respondent-employer's investigation leading up to the grievant's termination was sufficiently related to safety concerns and the evidence showed that the supervisors had violated general safety policies without being discharged. *Id.* slip op. at 3-5.

An expected argument from Respondents will be that NATL.HR.010 does not equally apply to supervisors and, therefore, the Union cannot establish that managerial corrective-actions are relevant to Tarina Marie's termination grievance. While not identical to the attendance policy in *Postal Service* or the disruptive conduct rule in *Westinghouse Electric Corp.*, NATL.HR.010 in this case does apply to both employees and managers and the separate sections of NATL.HR.010 are "sufficiently related" to one another. *E.I. Du Pont de Nemours and Co.*, supra at 5. While Section 1.0, "Policy Statement," of NATL.HR.010 states that it is the employee's responsibility to maintain their LCRs, it immediately follows it with "KP does not permit employees to work without required LCRs," indicating that managers have a critical role

in enforcing the functions of NATL.HR.010, and that NATL.HR.010 equally applies to managers as well as bargaining unit employees.

As described above by Czaja, when an employee provides services without a current LCR, it leaves Respondents vulnerable to various legal liabilities. To prevent the profound ramifications that may occur if an employee works with an expired LCR, NATL.HR.010 provides many safeguards to ensure that an employee maintains his or her LCR while working. As such, managerial responsibilities are referenced both implicitly and explicitly throughout the policy, most relevantly under sections 5.2.4, 5.3.3, and 5.3.4.¹⁹ Despite these precautions, Respondents somehow allowed Tarina Marie to work with an expired license for almost an entire month.

Under Section 5.2.4 of NATL.HR.010, the applicable KP [Kaiser Permanente] LCR specialist must verify an employee's LCR at the time of submission. Tarina Marie provided what she thought was her updated LCR, given to her supervisor in mid-February; however, she was not notified that her LCR had expired until over a month later. Under Section 5.3.3, of NATL.HR.010, if an employee does not update his or her LCR on time, that employee must be placed on unpaid leave or not scheduled to work until his or her LCR has been activated. Czaja testified that the only person who could have placed Tarina Marie on unpaid leave would be a manager; however, Tarina Marie was not placed on suspension until her license was again active.

Lastly, under Section 5.3.4 of NATL.HR.010, "any manager who knowingly permits an unlicensed person to work for him/her for any reason. . . will be subject to corrective/disciplinary

¹⁹ Section 5.3.1 of NATL.HR.010 states that managers may give employees courtesy notification of their LCR expiration. While not a mandatory managerial responsibility, it is clear from Land-Ariizumi's testimony that this does regularly occur for employees.

action, up to and including termination.” Tarina Marie’s supervisor possessed Tarina Marie’s mistaken renewal for over a month before notifying Tarina Marie that her LCR renewal was not valid. While Sections 5.2.4 and 5.3.3 do not reference any ordered discipline, Section 5.3.4 makes clear that managers will suffer some degree of discipline if they knowingly allow an employee under them to work without a current LCR.

Consequently, the Union requested managerial corrective-actions related to Tarina Marie’s case to assess whether its member was justly terminated, in comparison to any manager that may have known that she worked for a period of time with an expired license. Because NATL.HR.010 applies to both employees and managers, the Union’s request is relevant to assess whether Tarina Marie was disparately treated when she was terminated for working with an expired license and “to determine whether [the policy] had been applied evenhandedly. . . .” *Pfizer, Inc.*, 268 NLRB at 918-919. Based on the above, the Union had “a reasonable belief supported by objective evidence that the information it requested pertaining to supervisors [is] relevant.” *E.I. Du Pont de Nemours and Co.*, supra at 5.

Respondents may argue that managerial corrective action is not relevant because whether any managerial discipline exists or not has no bearing on Tarina Marie’s situation and would not result in a rescission of her termination. The Union has already acknowledged its agreement that the employee is responsible for maintaining his or her LCR, and does not dispute the fact that Tarina Marie let her license lapse. However, the Union has also illustrated how NATL.HR.010 applies to both employees and managers and shown the relevance of whether the policy was equally applied to a manager in this case to evaluating whether any disparate treatment occurred. Moreover, the Union communicated this reasoning to Respondents when Snyder emailed Czaja on June 21, 2018.

It is anticipated that Respondents will also argue that employees and management are not held to the same standard because Section 5.3.3 of NATL.HR.010 directs Respondents to automatically terminate an employee who works with an expired LCR, while Section 5.3.4 allows Respondents more discretion when disciplining managers who knowingly allow an unlicensed employee to work. The Board has considered this argument in the past and rejected it.

In *Postal Service*, the charging party-union requested information regarding the discipline given to supervisors for breaching the respondent-employer's plant-wide rules on gambling when a number of employees were disciplined and discharged for being involved in gambling activity. *Postal Service*, 289 NLRB 942 (1988), enfd. 888 F.2d 1568 (1989). The respondent-employer unsuccessfully argued that supervisors and unit employees have "different responsibilities, are judged by different criteria and, therefore are not similarly situated for purposes of discipline." *Id.* at 943. The Board recognized that while the respondent-employer may have had legitimate reasons for imposing different disciplines on a supervisor and a unit employee, because the rule equally applied to supervisors and employees, a difference in discipline would be solely based on the supervisory and nonsupervisory status of the participants. *Ibid.* The Board did not agree that, given the nature of the rule and the equal applicability, "that the different degrees of responsibility accorded each group automatically translates into different standards of discipline in this instance, thereby compelling a finding that the requested information has no bearing on the grievances." *Ibid.*

The Board in *E.I. Du Pont de Nemours and Co.* confirmed this standard when it wrote that "the fact that supervisors may be disciplined differently than bargaining unit members does

not make the Union's information request irrelevant, if both supervisors and unit employees are subject to the same rules." *E.I. Du Pont de Nemours and Co.*, supra at 6.

Even though management and unit employees in this case have different responsibilities and levels of discipline set out by the separate sections of NATL.HR.010, there are fixed consequences for both employees and management when an employee works with expired credentials. Currently, it is unknown whether any managers involved with Tarina Marie's case have received any discipline, whether it be a verbal warning or a suspension. As stated above, whether Respondents are equally enforcing those rules on both the employee and the supervisor will have bearing on Tarina Marie's grievance.

Therefore, the Union has met its burden and established the relevancy of its request for corrective-actions directly related to Tarina's case regarding management discipline/disciplinary action documentation for any managers related to this case.

2. Respondents Have Not Raised a Valid Objection

As with the request for the corrective-actions of UNAC members and other nursing unions, Respondents may argue that the managerial corrective-action records are confidential. Respondents may assert that to provide these corrective-actions would contravene their existing internal confidentiality policy, especially because there is only one manager involved. This claim falls short for the same reasons that it failed when applied to the information request regarding employees represented by UNAC and other nursing unions. Even though the referenced confidentiality policy has not been presented or proven by Respondents, a confidentiality policy does not take precedence over Respondents' statutory responsibilities to provide information in a collective-bargaining relationship, and there has been no evidence that managers expect that their discipline records will be kept confidential. *Holiday Inn on the Bay*,

317 NLRB at 482-483. Because the responsibilities for maintaining credentials apply to employees and managerial staff alike, the Union should have been granted access to those work records for discipline comparisons, in order to assess whether there was any disparate treatment.

Respondents' confidentiality argument also fails because Respondents did not offer an accommodation to address their confidentiality concerns, after making the objection. *Assn. Of D.C. Liquor Wholesalers*, 300 NLRB at 229. As with the previous information request where Czaja indicated that a confidentiality concern existed, he did not proffer any type of accommodation, either in the form of redacted corrective-actions or a nondisclosure agreement.

The Respondents have not raised a valid objection for this information request. Respondents have refused to provide corrective-actions directly related to Tarina's case regarding management discipline/disciplinary action documentation for any managers related to this case to the Union, in violation of Section 8(a)(5) of the Act.

D. Respondents Violated Section 8(a)(1) and (5) of the Act by Delaying for a Period of Six Months in Providing Corrective-Action Notes Relating to Tarina Marie.

1. *The Union Has Established the Relevance of This Request*

As with the previous requests, the Union has also met its burden for proving the relevance of its request for all corrective-action notes relating to Tarina Marie. In *Public Service Co. of New Mexico*, the charging party-union requested "any and all documentation that [the Respondent] used or considered . . . in determining the terminations," including the discharge memoranda and interview notes." 364 NLRB No. 86, slip op. at 2 (2016). The Board reversed the administrative law judge and determined that the union was entitled to the interview notes because they were necessary and relevant within the meaning of *NLRB v. Acme*. *Id* slip op. at 3. Because the interview notes could contain management's "mental impressions," they were

“plainly relevant to what the managers considered in deciding to discharge the employees.” *Public Service Co. of New Mexico*, supra slip op. at 3. The charging party-union was still entitled to the investigation notes even though a union steward was present at the meeting as “management’s mental impressions would not necessarily be evident to the steward.” *Ibid.*

Like the charging party-union in *Public Service Co. of New Mexico*, Land-Ariizumi testified that he made this request to examine whether management treated Tarina Marie’s situation in a fair and just manner, and Snyder’s written response to Czaja in the email sent on June 21, 2018, confirms that the Union desired to examine any potential targeting of Tarina Marie. Czaja merely referred the Union to its own representatives’ notes from those meetings, and insisted that the only relevant facts were already contained in the corrective action form, arguments that are immaterial because the Board has already stated that a union’s own investigation notes would not adequately convey “management’s mental impressions” regarding the employee in question. *Ibid.*

The Union has shown that the request for corrective-action notes was relevant and that it is entitled to the corrective-action notes relating to Tarina Marie.

2. Respondents Have Failed to Timely Furnish the Requested Information

The duty to supply requested information includes the duty to provide the information in a timely fashion. *Mary Thompson Hospital*, 296 NLRB 1245 (1989). Once the requesting union establishes the relevance of its information request, the burden shifts to the employer to provide the information in a timely manner, absent a valid defense. *Woodland Clinic*, 331 NLRB 735, 736 (2000). The failure to *timely* provide relevant information requested is a separate 8(a)(5) violation of the Act. *L.I.F. Industries a/k/a Long Island Fire Proof Door*, 366 NLRB, slip op. at

8. The Board has found that even a delay of two months amounts to a violation of Section 8(a)(5) of the Act. See, e.g. *Gloversville Embossing Corp.*, 314 NLRB 1258 (1994); *Postal Service*, 308 NLRB 547 (1992) (information provided 7 weeks after the request was made); *L.I.F. Industries a/k/a Long Island Fire Proof Door*, supra slip op. at 6 (information provided 6 months after the request was made).

Respondents did not provide the requested information in a timely manner and have not raised a defense that would relieve them of the burden to timely provide the information in this case. When examining whether an employer has unlawfully delayed in providing information, the Board will consider the “totality of the circumstances surrounding the incident.” *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. in relevant part 394 F.3d 233 (4th Cir. 2005). In doing so, the Board will evaluate the complexity and extent of the information sought, its availability and the difficulty in retrieving the information.” *House of Good Samaritan*, 319 NLRB 392, 398 (1995).

On April 17, 2018, the Union requested “all corrective action notes relating to Tarina Marie” in the grievance it filed on Tarina Marie’s behalf. The parties then traded numerous emails discussing all of the information requests, including this one, between April 17 and October 17, 2018. At no point during this time period did Czaja ever attempt to clarify the request or convey what he was doing, if anything, to comply with the request, either before or after Snyder explained the Union’s rationale for making the request. Czaja did not provide his own investigatory notes to the Union until October 17, 2018, approximately six months after the information was originally requested.

Respondents’ witnesses have not testified that this information request was overburdensome, overly complex, or voluminous. Czaja did testify that he understood that the

phrase “corrective-action notes” to include the notes of the managers present at the investigatory meeting, and contacted these managers to request their notes from the meetings. However, he found that the managers did not possess any such notes. While both parties have an obligation to timely inform the requesting party that the information does not exist, Czaja failed to communicate this to the Union in any fashion. *U.S. Postal Service*, 332 NLRB at 638. Instead, he protested the request, maintaining that the Union already had the responding information in its possession through its own agents’ notes, and through the corrective-action form.

Czaja further testified that, until he provided his own notes on October 17, 2018, he did not understand that “corrective-action notes” included his own notes. This does not excuse Respondents’ delay in furnishing the information. When interpreting a union’s information request, “the entire pattern of facts available to [the employer],” must be evaluated, not simply the basic wording of the request. *Ohio Power Co.*, 216 NLRB at fn. 9. Before the fact-finding meeting was held on April 5, 2018, Land-Ariizumi emailed Dawn Gillam, Director for the Department of Psychiatry in the Downey medical service area, and made a request for “any investigatory notes” that she had in her possession that led her to come to the decision to suspend Tarina Marie.

Furthermore, Busalacchi himself testified that he interpreted the term to be “the notes taken during the corrective action process possibly managers or if an HR consultant was involved in it by . . . then.” (Tr. 168). Finally, at no point did Czaja attempt to confirm his understanding of the request with the Union. Given all of the information available to Respondents regarding the term “corrective-action notes,” Czaja’s individual understanding of the term does not excuse the delay.

Given the above, Respondents have failed to timely provide all corrective-action notes relating to Tarina Marie, in violation of Section 8(a)(1) and (5) of the Act.

V. CONCLUSION

Based on the above, the record evidence and applicable Board law establish that Respondents violated Section 8(a)(1) and (5) by: refusing to provide the Union with relevant requested information, and by untimely furnishing the Union with certain requested information. By engaging in this unlawful conduct, Respondents have inhibited the Union's ability to represent its members and interfered with employee rights under Section 7 of the Act. Therefore, a violation of the Act occurred that needs to be remedied.

Respectfully submitted,



Molly Kagel
Irma Hernandez
Counsels for the General Counsel
National Labor Relations Board

Dated at Los Angeles, California, this 14th day of May, 2019.

VI. REMEDY

Counsel for the General Counsel submits the following order is the appropriate remedy:

Kaiser Foundation Hospitals and Southern California Permanente Medical Group, their officers, agents, successors, and assigns be ordered to:

1. Cease and desist from:
 - a. Refusing to bargain collectively and in good faith with the National Union of Healthcare Workers (the Union) by refusing to provide requested relevant information that the Union needs to represent bargaining unit employees.
 - b. Refusing to furnish the Union all of the information in the Union's April 17, 2018, and June 21, 2018, information requests.
 - c. Unreasonably delaying in providing the information requested by the Union in the Union's April 17, 2018, and June 21, 2018, information requests.
 - d. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - a. Promptly furnish the Union with all of the information that it requested on April 17, 2018, and June 21, 2018, regarding the termination of bargaining unit employee Tarina Marie.
 - b. Notify the Regional Director for Region 21, in writing, within twenty-one (21) days from the date of the Administrative Law Judge's Order, what steps have

been taken to comply with the Order, including how Respondents have posted the documents required by the Order.

- c. Within 14 days after service by the Region, post at the facility located at 9449 Imperial Highway, Downey, California 90242, an appropriate copy of the attached notice.²⁰ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondents' authorized representatives, shall be posted by Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily placed. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if Respondents customarily communicates with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event Respondents have gone out of business or closed any facilities involved in these proceedings, Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees in the bargaining unit employed by Respondents at any time since April, 2018.

ATTACHMENT (PROPOSED NOTICE)

²⁰ A proposed notice is attached.

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

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

WE WILL NOT fail or refuse to provide the **NATIONAL UNION OF HEALTHCARE WORKERS (“UNION”)** with information that is relevant and necessary to its role as your bargaining representative.

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

WE WILL PROVIDE the **UNION** with the information it requested on April 17, 2018, and June 21, 2018, by Benjamin Snyder, including:

1. All corrective-action cases involving NUHW members who have worked on an expired license.
2. All corrective-action cases involving UNAC [United Nurses Association of California] or other nursing union members who have worked on an expired license.
3. Any corrective/disciplinary action documentation for any managers related to this case. (The Union is seeking information pertaining to any corrective actions and/or discipline issued to management which are directly related to Tarina Marie’s case).

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

KAISER FOUNDATION HOSPITALS; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP

(Employer)

Dated:

By:

James Czaja

Human Resources
Consultant

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.

312 N. Spring Street, 10th Floor
Los Angeles, CA 90012

Telephone: (213) 894-5200

Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Office

STATEMENT OF SERVICE

I hereby certify that a copy of the **BRIEF OF COUNSEL FOR THE GENERAL COUNSEL** was submitted by e-filing to the Division of Judges of the National Labor Relations Board on May 14, 2019.

The following parties were served with a copy of said document by electronic mail on May 14, 2019:

DIAMONDS M. HICKS, ESQ.
KAISER FOUNDATION HOSPITAL/HEALTH PLAN
Email: diamond.m.hicks@kp.org

FLORICE HOFFMAN, ESQ.
LAW OFFICE OF FLORICE HOFFMAN
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Respectfully submitted,



Molly Kagel
Irma Hernandez
Counsels for the General Counsel
National Labor Relations Board
Region 21