DUNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 19

TDY INDUSTRIES, LLC d/b/a ATI SPECIALTY ALLOYS AND COMPONENTS, MILLERSBURG OPERATIONS	)	**Cases: 19-CA-227649 and 19-CA-227650**
Respondent	)	
and	)	
UNITES STEELWORKERS OF AMERICA, LOCAL 6163	)	
Charging Party	)	

RESPONDENT'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE

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I. STATEMENT OF THE CASE

On or about September 20, 2018, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Local 6163 ("the Union") filed two unfair labor practice charges against ATI: Case Nos. 19-CA-227649 and 19-CA-227650. On January 31, 2019, Ronald K. Hooks, the Regional Director for Region 19, issued a Consolidated Complaint ("Complaint") alleging ATI violated Sections 8(a)(1) and (5) of the Act by "fail[ing] and refus[ing] to furnish the Union with the information requested" and "unreasonably delay[ing] in furnishing the Union with the information requested." (GC Ex. 1(e), ¶¶ 6(g) through (i))[1]. The hearing took place on June 3, 2019. At the beginning of the hearing, Counsel for the General Counsel ("General Counsel") withdrew allegations in the Complaint regarding "A" Machinist Jessie Sanders. (GC Ex. 1, ¶ 6(e)).

The evidence presented at the parties' June 3, 2019, hearing demonstrates that the General Counsel failed to establish that ATI violated section 8(a)(1) and (5) of the Act by refusing to provide information to the Union about "death benefits" (a phrase that the General Counsel characterized as a "vague" during the trial) when: (1) the original recipient of the request went on a leave of absence to care for her dying husband shortly after receiving the Union's request; (2) the Company requested additional detail to help clarify and understand the Union's request; and (3) the Union deliberately withheld such information that would have allowed the Company to understand and respond to the Union's request.

The General Counsel similarly failed to establish that ATI violated the Act by refusing to provide information about "A" Machinist qualifications, where ATI complied with its obligations under the Act by timely responding to the Union's request for information. Where

[1] References to the hearing transcript will be "Tr." followed by the appropriate page number. General Counsel exhibits will be referenced as "GC Ex. _." Respondent exhibits will be referenced as "R. Ex. __."

ATI did not immediately provide the information requested, it followed the normal give and take of the parties' long-established bargaining relationship to determine what the Union sought and whether it was relevant to the issue at hand. Due to scheduling delays, the parties were unable to meet to discuss the Union's information request until September 2018. After that meeting, the Company promptly provided the remaining information. Any delay in the Company's response was reasonable under the circumstances, and there was no prejudice to the Union as a result.

Accordingly, the Administrative Law Judge should dismiss in its entirety the Consolidated Complaint issued on behalf of the Union.

II. BACKGROUND FACTS ABOUT ATI SPECIALTY ALLOYS AND COMPONENTS

Respondent ATI Specialty Alloys and Components, Millersburg Operations ("ATI" or the "Company") is a leading global manufacturer of specialty alloys and components for the aerospace, defense, oil and gas, automotive, and medical industries, among others. (Brown, Tr. 113:12-23; https://www.atimetals.com/businesses/atispecialtyalloysandcomponents).

Lee Weber is President of ATI Specialty Alloys and Components ("SAC"). (Kienbaum, Tr. 135:1-3). Mike Bernard is Vice President of Operations for the Company's manufacturing facility located in Millersburg, Oregon ("Millersburg"). (*Id.*). Terry Brown is Director of Benefits at ATI. (Brown, Tr. 112:20-22). In that capacity, Brown oversees overall strategic design and plan management of all of the benefit and retirement plans that ATI offers to its approximately 7,000 employees in the United States. (Brown, Tr. 113: 2-6). From May 2018 until approximately June 2018, Hilary Stephens worked as the local benefits manager, or Process Leader, for employees in Millersburg. (Brown, Tr. 114:10-14).

At all relevant times, the Union represented a bargaining unit of hourly employees in Millersburg. (Watts, Tr. 15:24-25; GC Ex. 6). Steve Eddings is President of Local 6163 and Aaron Watts is the Local 6163 Grievance Chair. (Eddings, Tr. 24: 14-15; Watts, Tr. 14:24-25).

III. CASE NO. 19-CA-227649

1. Introduction

This case stems from the Union's vague and unclear requests for information regarding "death benefits." Contrary to the Consolidated Complaint, Respondent never refused to provide this information to the Union. As the Union witnesses admitted during the hearing, the original recipient of the Union's request took a medical-related leave of absence to care for her dying husband shortly after receiving the Union's request. This caused a minor delay that was reasonable under the circumstances.

When the Union redirected its request to Brown, Respondent's Corporate Director of Benefits, Brown immediately requested clarification on the information that the Union sought. Rather than refusing to provide information, Brown repeatedly told the Union that he would be happy to provide the information if the Union could simply provide some examples or additional detail to help clarify which of Respondent's many benefit plans the Union wanted the Company to audit. Despite having this information readily available, including a copy of the applicable SPD and the names of two beneficiaries who allegedly did not receive benefits, the Union refused to provide any additional information to Brown to help clarify its request. The Union's failure to share this information with Brown – knowing that would have allowed Brown to locate and provide the information requested – is evidence of bad faith and should not be rewarded by the Administrative Law Judge.

2. Relevant Facts about the Union's "Death Benefits" Information Request

Between May 22 and May 25, 2018, Watts and Stephens exchanged a series of emails attempting to schedule an in person meeting to review "outstanding issue[s]" related to employee benefits in Millersburg. (GC Ex. 2, p. 2-3). On May 25, 2018, in that same email thread about scheduling a meeting, Watts sent Stephens the following request:

> It has been brought to my attention that we need to audit the death benefits. Is there an easy way to get records on death benefits paid out over the last 10 years? Also the surviving spouse benefits and earned pension benefits after deaths for both active and terminated, as well as retired employees.

(GC Ex 2, p. 2). Stephens responded to Watts less than an hour later, stating: "I'm sure it's possible. Let me see what all I can gather. I'll reach out for specifics if I need anything additional. Is there something not going right? I haven't heard any rumbling on that." (GC Ex. 2, p. 1). On Tuesday, May 29, 2019, Watts emailed Stephens again, writing "Yes we have heard some rumblings, but I need to see if there is merit." (GC Ex. 2, p. 1).

During the hearing, Watts testified that he requested information about death benefits because "[w]e had a – a widow of a member who had been in the union hall, and we had – through that discussion – it came to our attention that they did not receive – or she did not receive the death benefits – that she knew of …" (Watts, Tr. 21: 3-8). According to Watts, the Union had "at least one concrete example of – of an employee or a widow of an employee who did not receive – they didn't feel at that point – they did not receive the death benefit." (Eddings, Tr. 25:22-25). Watts also testified that the Union knew of "others that were unsure if they had received the death benefit." (Watts, Tr. 25:25-26:2).

Sometime after the email exchange described above, Watts and Eddings allegedly held a meeting with Stephens in her office. (Watts 22: 7-12; Eddings, 105:19-20). Neither Eddings nor Watts could recall the date of this alleged meeting and neither witness took notes to substantiate the content of their conversation with Stephens. (*Id*.). Nonetheless, during the trial, Watts and Eddings both testified that they brought a copy of the SPD for the Millersburg employees' pension plan (GC Ex. 7) with them to the meeting with Stephens, and that they reviewed it together with Stephens in her office while they discussed their request for a "death benefits" audit. (Watts, Tr. 27:1-3, Eddings, Tr. 106:14).

During the early summer months of 2018, Stephens took an extended leave of absence in order to care for her husband, who was dying of cancer. (Eddings, 109:2-6). Knowing that Stephens was out of the office caring for her dying husband, Watts followed up with Human Resources Manager Stephanie O'Connor about his request for a "death benefits" audit. (Watts, Tr. 28:5-11). O'Connor told Watts that she did not know the issues that he had discussed with Stephens, and directed Watts to address his questions to Brown, who was covering for Stephens in her absence. (Watts, Tr. 28:16-19).

On Thursday, July 12, 2018, Watts emailed Brown regarding, among other things, his request for information about "unpaid death benefits." Specifically, Watts told Brown that he had been in contact with Stephens, who was "understandably" unavailable. (GC Ex. 3, p. 5). Without providing any substantive detail about the particular plan or plans at issue, Watts went on to say that Stephens "was going to look at doing some audits" to determine, among other things, "death benefit payouts." (*Id*.). Watts closed his email by stating: "We need to make sure this is happening please. Is this something you can help facilitate?" (*Id*.).

Brown responded to Watts' email less than an hour later. (*Id.*). In that response, Brown thanked Watts for reaching out and said that he was unaware of the specific issues that he had discussed with Stephens. (*Id*.). Nevertheless, in an effort to assist the Union, Brown asked Watts if to "provide me with examples that I can start to research? I'm hoping to have Hilary back by August 1st, but would like to start researching in the meantime." (*Id*.).

Watts responded to Brown's email later that same day, but provided only limited information about the "death benefits," which could be characterized as vague, at best:

> As for the death benefit, I don't recall ever receiveing [sic] notification when a payment is made. Of recent deaths, we called two. One did not know if a payment was received, the other was told they were not entitled to payment. While we do not agree this spouse was not entitled, we asked for clarification from the

> company to this effect, and requested records of payment that have been made. This may also benefit from an audit."

(GC Ex. 3, p. 3).

At the time, Brown oversaw benefits for 36 different collective-bargaining agreements covering ATI's employees in the United States. (Brown, Tr. 115:5-6). Other than recently stepping in to assist in Stephens' absence, Brown had no day-to-day responsibility for the administration of benefits in Millersburg. (Brown, Tr. 114-3-4). As Director of Benefits, Brown knew that, in Millersburg alone, bargaining unit employees could receive some sort of "death" benefit under the pension plan, 401K, Company-paid life insurance, supplemental life insurance, accidental death and dismemberment plan, business travel and accident plan, long-term disability plan, health insurance, and retiree medical insurance plan. (Brown, Tr. 116:8-21). During the trial, Brown testified that, "given the sheer number of death benefits available to that group [in Millersburg], I would – I would need the actual benefit or the actual plan that – that is responsible for paying a benefit" in order to respond to the Union's request for information.[2] (Brown, Tr. 117-9-15).

Understandably confused, and knowing that bargaining unit employees in Millersburg had a variety of benefits that an employee's death triggered or otherwise impacted, Brown asked Watts to clarify his request on Tuesday, July 17: "Can you please also clarify the 'death benefit' you mentioned below? Are you saying that there were two recent deaths of active employees, and no benefit was paid to a beneficiary?" (*Id.*). Rather than providing the names of the beneficiaries, or a copy of the applicable SPD (which Watts admitted he showed Stephens, but for some reason refused to mention to Brown), Watts responded to Brown's request for

[2] Brown also testified at the trial that, in order to collect benefit information under any of these plans, he would have to know the time period of individual's death, since plan administrators change regularly. (Brown, Tr. 116:25, 117:1-8).

clarification with a single sentence: "Yes, we are concerned eligible beneficiaries may not be getting their death benefits." (GC Ex. 3, p. 2). A union representative seeking a resolution would have directed Brown to the appropriate page of the SPD, which Eddings admits he knew. (Eddings, Tr. 110:12).

Watts sent another email to Brown on Wednesday, August 15, requesting an update on his previous emails. (*Id*.). Again, Watts made no mention of the SPD and failed to provide any further clarification despite being able to do so quickly and easily. Brown responded to Watts that same day, providing some of the unrelated information that Watts had requested, and repeating his request for further clarification on his request for information about "death benefits:" "I'm still unclear on the issue you mentioned on death benefits, but Hilary and I are happy to investigate further if you could provide more details." (*Id*.). Rather than providing any further information about the death benefits to assist Brown with his request, however, Watts stated: "If we could get our information requests fulfilled, I should be able to provide more specifics." (GC Ex. 3, p. 1). Here, Watts had the perfect opportunity to direct Brown to the appropriate SPD and page number of the SPD. Again, he failed to do so. At hearing, Watts provided no explanation for knowing the answer to Brown's repeated question and his failure to answer it. (Watts, Tr. 59:16; 60:22-25; 61:1-6). Nor did he have any explanation as to why he failed to contact the number located on the SPD for further information. (Watts, Tr. 54:10-13).

On September 4, 2018, Watts sent another email to Brown on September 4, 2018, asking if he was "able to find any more information on the death benefit payments?" (GC Ex. 3, p. 1). Once again, Mr. Watts failed to identify the information he sought, other than vaguely alluding to payment of death benefits. The Union filed an unfair labor practice charge approximately two weeks later.

During the trial, Watts testified that he never believed that Brown was confused about the information that he had requested, and that he actually perceived Brown's questions as "resistance." (Watts, Tr. 29:25; Tr. 92: 18-24; Tr. 29:17-20 ("Q: At any time during your emails with Mr. Brown, did Respondent express to you that it did not know what benefit you were referring to? A: No"). Brown's emails plainly contradict this testimony. Brown repeatedly requested clarification and expressed confusion over the specific information that the Union sought. Despite repeated requests for examples or further information, and despite the Company's undisputed practice of asking the Union to provide examples to illustrate the type of information it sought, Watts never provided any of the information that he had in his possession (such as the SPD or names of widows who had inquired about the benefit) to Brown. (Watts, Tr. 94: 10-13; Tr. 94:23-25). Eddings, on the other hand, testified readily that Watts could have directed Brown to the applicable SPD if he had wanted to bring someone "new" to the conversation up to speed about the benefits at issue. (Eddings, Tr. 110:12).

3. ATI Never Refused to Provide Information to the Union and Complied with its Obligations under the Act by Requesting Clarification in Response to the Union's Vague Information Requests about "Death Benefits"

It is well-established that the duty to supply information under the Act is not absolute. *See Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979) ("the duty to bargain collectively, imposed by Section 8(a) of the Act, includes a duty to provide *relevant* information requested by the union for the proper performance of its duty as the employees' bargaining representative") (emphasis added). "The obligation to supply information is determined on a case-by-case basis, and it depends on a determination of whether the requested information is relevant and, if so, sufficiently important or needed to invoke a statutory obligation on the part of the other party to produce it." *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

Despite the Board's broad discovery standard, a vague or speculative explanation for a request is insufficient to establish relevance and, consequently, insufficient to trigger an employer's duty to supply the requested information. *See Rice Growers Ass'n of Cal*., 312 NLRB 837 (1993); *Disneyland Park*, 350 NLRB No. 88 (Sep. 13, 2007); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1099 (1st Cir. 1981); *see also Rice Growers Ass'n of Cal.*, 312 NLRB 837 (a broad or vague request will not trigger an employer's duty to supply the requested information).

Applying these principles to the instant case, as an initial matter ATI at no point refused or expressed an unwillingness to provide the Union with the information that it requested regarding "death benefits." Stephens, for example, responded within an hour of receiving Watts' May 25, 2018, email requesting if there was "an easy way to get records on death benefits over the past 10 years?" (GC Ex. 2, p. 2). In her response, Stephens clearly said she would "reach out for specifics" if she needed any additional from the Union in order to respond to its request. (*Id.*). Stephens also asked if "something [was] not going right? I haven't heard any rumbling on that." (*Id*.). Watts admitted during the hearing that, even though he had the name of at least two beneficiaries who had inquired about benefits that they may not have received, he did not provide this information to Stephens in response to her inquiry about potential problems with the benefit. (Watts, Tr. 60:25-61:1).

Second, it is impossible to ignore the fact that, shortly after this initial exchange with Watts, Stephens took an extended medical leave in order to care for her dying husband. (Watts, Tr. 60:10-11; Eddings, Tr. 109:2-6). Stephens' sudden departure left Brown to cover the day-to-day benefits issues in Millersburg along with his regular job duties, which understandably created a minor delay in the Company's response to the Union's request. (Brown, Tr. 112:25). Watts and Eddings both admitted during the trial that they knew of Stephens' leave of absence as

well as the circumstances surrounding it. (Watts, Tr. 60:10-11; Eddings, Tr. 109:2-6). The circumstances surrounding Stephens' leave and her inability to respond to Watts' May 25, 2018, information request exceeded the parties' control and do not evidence any unlawful delay to provide information.

We then turn to Watts' correspondence and requests to Brown, which illustrates how the Union's poor communication and refusal to work collaboratively with the Company ultimately prevented the Company from providing the information requested. In Watts' July 12, 2018, email to Brown, he acknowledged Stephens' unavailability and vaguely asked Brown to "help facilitate" some "audits" that Stephens would look into doing regarding "death benefit payouts." (GC Ex. 3, p. 5). Watts' email did not reference the plan or SPD that he was concerned with, or otherwise identify the type of "death benefit" that he had discussed with Stephens, even though he admitted that he knew the information and could provide Brown that information. (*Id.*; Watts, Tr. 53:16; 60:25-61:6). Watts' information request was too vague to trigger Respondent's obligation to provide the information.

Respondent concedes that "if an employer believes a request is ambiguous or overbroad it must seek clarification or comply with the request to the extent it encompasses relevant information." *Superior Protection Inc.*, 341 NLRB 267, 269 (2004), *enfd*. 401 F.3d 282 (5th Cir. 2005), cert denied 546 U.S. 874 (2005). Here, even Counsel for the General Counsel characterized phrase "death benefits" as "vague and misleading" during the trial. (GC, Tr. 49:10-16). Recognizing that the information the Union sought was not evident on the face of Watts' request, Brown responded to Watts' email *within an hour* to confirm receipt and to seek clarification on the information sought. (GC Ex. 3, p. 5). Specifically, Brown asked Watts if he could provide "some examples" of the issues so that he could start to research the information in Stephens' absence. (*Id.*).

As Director of Benefits, Brown understood that employees in Millersburg could receive at least nine different benefits that provided some sort of benefit or payout upon death. (Brown, Tr. 116: 8-21). He also understood that a different administrator ran each of these benefits. (Brown, Tr. 118:2-6). Hoping to obtain some additional information about the type of "death benefit" that concerned Watts, Brown lawfully requested additional clarification from Watts. (GC Ex. 3, p. 3). In response, Watts failed to provide any specifics about the type of "death benefit" at issue or the deceased employees whose spouses allegedly did not receive the benefit, even though he had that information available to him at the time and could have provided it to Brown. (*Id*.; Watts, Tr. 61:2-8; 65:3-9, Brown, Tr. 121:6).

Rather than providing the clarification the Company requested, or providing the names of the two beneficiaries who allegedly had not received the benefit, Watts ignored Brown's good faith efforts to understand the Union's request and simply repeated his request for "information on the death benefit payments." (GC Ex. 3, pp. 1-2). In so doing, the Union deliberately withheld information that – upon Watts' and Eddings' admission – would have immediately directed Brown to the benefit at issue and allowed him to provide the information requested. (Eddings, Tr. 110:12; Watts, Tr. 70:10-15; 53:16).

A union's refusal to engage in a dialogue or acknowledge a legitimate concern by an employer also can serve as evidence of a union's bad faith in making the information request. *See United Parcel Serv. of Am., Inc. & Int'l Bhd. of Teamsters, Local Union* 373, 362 NLRB No. 22 (2015) (noting that where the respondent sought to lessen its burden by negotiating an accommodation based on the union's needs, and the union ignored the request for an explanation and merely repeated that it wanted every document requested "[b]oth the failure to explain and the refusal to compromise reflect on the Union's motivation."). Realistically, if Watts had truly wanted the "death benefit" information that he requested, he would have provided the

information that Brown requested to effectively respond to the Union's request. The Union's failure to meaningfully respond to Brown's requests for clarification evidences of bad faith under these circumstances. The Administrative Law Judge should dismiss these allegations against the Company.

IV. CASE NO. 19-CA-227650

1. Introduction

This case involves the Union's requests for the "qualifications" of a recently-hired "A" Machinist in connection with a grievance which alleged that the Company had passed over qualified internal candidates by hiring an "A" Machinist from outside of the bargaining unit. Once again, Respondent never refused to provide any information to the Union. Instead, Respondent fully complied with its obligations under the Act by providing information in response to the Union's request, even where such information was not necessarily relevant to the underlying grievance, in a timeframe that was reasonable under the circumstances. Where such information was not immediately provided, Respondent followed the parties' longstanding practice of offering to discuss the relevance of the Union's request (which the Union declined to do). Any delay in the production of this information was minor and attributable to the Union's refusal to discuss the matter with the Company's representatives, as well as scheduling delays that postponed the parties' regularly scheduled grievance meetings. Once the parties finally had a chance to discuss the basis of the Union's request, the Union agreed to limit the scope of its request and Respondent immediately provided the information.

2. Relevant Facts about the Union's "A" Machinist Qualifications Information Request

On June 12, 2018, Mr. Watts sent an email to Ursula Kienbaum, who was providing on-site labor relations assistance and legal advice to ATI at the time, and requested information about a recently-hired "A" Machinist. Watts' email read as follows:

> [O]n the recent machinist hired off the street (Michael Marthaller), please provide all of his qualifications, resume, prior work experience, any pre-hire testing and results, interview Q & A, transcripts and any other information referenced during the hiring process.

(R. Ex. 1, p. 1). Watts also requested Marthaller's job, area, shift, and the bid notice for the position that he filled. (*Id.*).

Kienbaum, who was out of the state on vacation through the end of the following week when she received Watts' email, responded within a few hours, letting him know that she would "turn to this information request upon [her] return." (*Id.*). Later that same day, on June 12, 2018, Watts filed a grievance alleging that the Company had "denied promotional opportunities to bargaining unit employees" by hiring employees from outside of the bargaining unit in violation of Article 10 and Index U of the parties' collective-bargaining agreement.[3] (GC. Ex. 8). This grievance paralleled a number of other grievances that the Union had recently filed on behalf of machinists. (Kienbaum, Tr. 132:17-21).

Upon her return to work on Wednesday, June 27, 2018, Kienbaum promptly responded to Watts' request for information. (GC Ex. 4, p. 3). In her response, Kienbaum provided Watts with Marthaller's date of hire, schedule, shift, and the name of the employee that Marthaller replaced (which revealed his work area). (*Id.*). Kienbaum also attached a copy of the original job posting as Watts requested, which Respondent had posted pursuant to Article 10 of the

[3] Article 10 of the parties' 2013 collective bargaining agreement (GC Ex. 6) sets forth the bidding procedures and eligibility rules for bargaining unit employees. According to Section 10.4 of the agreement, when a vacancy occurs, first consideration is given to the employee with the most department seniority who is qualified to perform the job. If there are no qualified bidders in the department, then the vacancy opens up to the senior most probationary employee who has signed the plant-wide bid sheet. If there are no qualified probationary bidders, then the Company "may fill the vacancy by hiring from the outside and assigning the new employee to the position…" (GC Ex. 6, p. 27). That is precisely what the Company did in this case; *i.e.*, it hired Marthaller after determining that there were no qualified department, probationary, or plant-wide bidders for the position. Index U, in contrast, describes a line of progression for existing machinists. Index U does not reference outside hires or newly hired employees (GC Ex. 6; Watts, Tr. 78:10), and the CBA does not limit the Company's right to determine the "qualifications" for outside hires in any way.

collective-bargaining agreement. (*Id*.). In response to Watts' request for information about Marthaller's "A" Machinist "qualifications," Kienbaum told Watts that Marthaller graduated with an AAS degree in Machine Tool Technologies from Benton Community College and that Mr. Marthaller did not undergo any pre-hire testing. (*Id.*).

Watts would later claim that he needed the information in connection with his June 12 grievance under Article 10 and Index U of the collective-bargaining agreement. Kienbaum understood that neither of these provisions of the collective-bargaining agreement provided a vehicle for the Union to challenge the qualifications of *external candidates*, as opposed to challenging the Company's determination that *internal candidates* were not "qualified" for the "A" Machinists position under Article 10.4. (Watts, Tr. 71:1, 74:20, 75:15).

As Watts testified during the hearing, the Union had an ongoing dispute with the Company's decision to hire machine shop candidates from the outside "rather than bringing people up the line of progression in Index U." (Watts, Tr. 86:1-4). Kienbaum accordingly asked Watts to clarify the relationship between the pending grievance and the qualifications of outside candidates. (GC Ex. 4, p. 3). Kienbaum also expressed confidentiality concerns about some of Marthaller's application materials, since Watts' request for "any other information referenced during the hiring process" was so overly broad that it could potentially have included personal information that had nothing whatsoever to do with Marthaller's qualifications.

Additionally, in an effort to encourage dialogue between the parties about the Union's underlying concerns regarding the promotion of internal machinists, and consistent with the parties' practice of discussing questions about requests for information in person, Kienbaum offered to schedule a separate meeting with Watts and Russ Smith, the department manager, to discuss the Union's concerns. (GC Ex. 4, p. 3; Kienbaum Tr. 131:3-7). During the hearing, Kienbaum testified that she knew that the Union had ongoing concerns about the machinists' line

of progression under Index U, and that she "wanted to make sure we had an understanding of how this particular request fit into all of that and how we might be able to provide better information to respond." (Kienbaum, Tr. 132: 17-21). Watts, in turn, admitted during the hearing that he never took Kienbaum up on her June 27 offer for an in-person meeting with the department. (Watts, Tr. 81:22-25; Kienbaum, Tr. 132:24, 133:3-7).

Absent Watts' acceptance of an additional meeting to discuss the Union's request for information and potential accommodations for the same, the parties' next regularly scheduled face-to-face grievance meeting was scheduled for August 14, 2018. (Kienbaum, Tr. 134:16-20). As Watts admitted during the hearing, as a matter of practice the parties regularly discussed pending information requests during grievance meetings. (Watts, Tr. 150:17-21; Kienbaum, Tr. 131:3-7; 133:18-24; 144: 22-23). This was due, in part, to the sheer volume of information requests and email traffic from Watts to various individuals within Respondent's Human Resources Department. (Kienbaum, Tr. 131:3-7,145: 8-11). Unfortunately, Kienbaum had to cancel the August 14, 2018, grievance meeting due to travel issues. (R. Ex. 3; Kienbaum, Tr. 135:7). Kienbaum followed up with Watts by email on August 17, 2018, to confirm that the parties would discuss the June 2018 machinist grievance during their next regularly-scheduled grievance meeting in September. (R. Ex. 4).

On September 13, 2018, the parties' next grievance meeting took place. (GC Ex. 5; Kienbaum, Tr. 137:22). Watts, Eddings, Bernard, and Kienbaum attended. (Kienbaum, Tr. 138:4). During that meeting, the parties discussed the Union's machinist grievance, as well as the related information request (which followed the parties' practice). (Watts, Tr. 84:21; Kienbaum, Tr. 139: 5-17; Tr. 144: 22-23). Not surprisingly, the Union argued that the Company violated Index U of the collective-bargaining agreement by hiring Marthaller "rather than bringing people up the line of progression in Index U." (Watts, Tr. 86:1-4). On behalf of the

Company, Kienbaum renewed concerns about "how the qualifications of outside machinists were relevant to the Union's grievance that internal candidates were … passed over." (Kienbaum, Tr. 140:1-13).

After some initial discussion about the information request, Eddings, who Kienbaum described as a "relatively quiet person" who "likes to have the final say," put his hand down on the table and said: "Can you get us the . . . resumes and the cover letters?" (Kienbaum, Tr. 140:1-13). Kienbaum agreed and provided copies of Marthaller's cover letter and resume to Watts the following day, understanding that Eddings had agreed to limit the scope of the Union's request. (GC Ex. 5, p. 5; Kienbaum, Tr. 140L 1-13).

On September 17, in an effort to address statements that Watts had made during the September 13 grievance meeting suggesting that Marthaller was "unqualified" to perform machining work, Kienbaum provided *additional* documents that Marthaller had included with his application for the A Machinist position, including photographs of his machining work and test scores from Marthaller's degree in machining,. (GC Ex. 5, p. 5). Although this information was not necessarily relevant to the Union's grievance, and beyond what the parties agreed ATI would provide, Kienbaum felt that the information showed "objective evidence or proof of [Marthaller's] qualifications" and the "type of machining work that Mr. Marthaller was capable of doing…" (Kienbaum, Tr. 141: 1-11).

Despite receiving this information from the Company, and contrary to the parties' discussion during the September 13 meeting, Watts continued to demand additional information from Kienbaum about Marthaller's "qualifications," including the identity of the person who had redacted test scores for the other students in Marthaller's machining class (Marthaller had), if this was "all of the employment information for [Marthaller]," and whether there were any transcripts "or other information?" (GC Ex. 5, pp. 4-5). On September 17, 2018, seemingly

ignoring the information that Respondent had provided to date, Watts demanded to see "all of [Marthaller]s] qualifications." (GC Ex. 5, p. 4). After receiving no immediate response from Kienbaum, Watts followed up a few hours later to request "[e]verything the [C]ompany has on file including but not limited to, any interview Q&A, transcripts, previous work history, tests (that have not yet been provided), and communication with [Linn Benton Community College], letters of recommendation, etc." (GC Ex. 5, p. 3).

Kienbaum responded to Watts' request less than four hours later. (GC Ex. 5, p. 2). After reiterating concerns about the scope of the Union's request for "everything the Company has on file," and citing the tenuous connection between the Union's ongoing information requests and the pending grievance, Kienbaum explained that she had "no problem providing information to you [Marthaller's] personnel files reflecting [his] work background[] or qualifications as represented to the Company at the time of hire. I've already provided you with Mr. Marthaller's resume, cover letter, final machining test grades, and photographs of his machining work that [Marthaller] provided at the time of application." (GC Ex. 5, p. 2). After agreeing to provide two additional letters of recommendation that the Company had received at the time of Marthaller's application, Marthaller's college transcript, and Marthaller's diploma, Kienbaum confirmed that "this information provides the work history and certificate information that you requested for these employees." (GC Ex. 5, p. 2; Kienbaum, Tr. 142:14).

Two days later, on September 20, 2018, Watts file an unfair labor practice charge against the Company.

3. Respondent Complied With its Obligations under the Act by Providing the Requested Information about a Recently-hired "A" Machinist, and No Unreasonable Delay Occurred

The employer's duty to provide information is limited to information necessary to effectively carry out a union's statutory duties and responsibilities in representing bargaining unit

employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty to provide information includes information relevant to contract administration and grievances. *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987); and *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), *enfd.* 715 F.2d 473 (9th Cir. 1983). The obligation to provide information is not, however, without limits. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956).

If the Respondent "shows that it has a valid reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested." *United Parcel Serv. of Am., Inc. & Int'l Bhd. of Teamsters, Local Union 373*, 362 NLRB No. 22 (Feb. 26, 2015). The employer must "articulate those concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation. . . . [c]orrespondingly, where an employer fulfills those obligations, the union may not ignore the employer's concerns or refuse to discuss a possible accommodation, <u>even when the requested information is presumptively relevant</u>." (*Id.*) (emphasis added); see *East Tennessee Baptist Hospital v. NLRB*, 6 F.3d 1139 (6th Cir. 1993) (employer's offer to provide confidential information to a neutral third-party CPA was reasonable, because union failed to establish that its need for the information outweighed the employer's compromise offer); *Oil, Chemical and Atomic Workers v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983).

It is also well-established that an employer must timely respond to a union request seeking relevant information, even when the employer believes that it has grounds for not providing that information. *See Columbia University*, 298 NLRB 941, 945 (1990) ("[A]n employer must respond to a union's request for relevant information within a reasonable time, either by complying with it or by stating its reasons for noncompliance within a reasonable period of time. Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act. Some kind of response or reaction is mandatory."). The

Board considers the "totality of the pertinent circumstances" to determine if an employer has failed to respond in a timely manner to an information request. *Endo Painting Service*, 360 NLRB 485, 486 (2014).

As noted above, Kienbaum timely acknowledged Watts' June 12, 2018, information request and provided assurances that she would review and respond to the Union's request for "A" Machinist "qualifications" as soon as she returned to Oregon the following week. (R. Ex. 1, p. 1). In her response dated June 27, 2018, Kienbaum provided the information available to her at the time, including information about Marthaller's recent degree in Machine Tool Technologies. (GC Ex. 4, p. 3; Watts, Tr. 81:1). During the trial, Watts admitted that an individual's "qualifications" include schooling, which confirms the responsiveness of the information that Kienbaum provided to the Union on June 27, 2018. (Watts, Tr. 77:17).

Kienbaum also timely raised concerns about the relevance and scope of the Union's request, particularly in relation to the Union's underlying grievances and unfair labor practice charge. Concerned about Watts' hostility towards outside hires, and knowing that Marthaller was a very recent hire, Kienbaum asked the Union to explain the relevance of its request, and offered to sit down to discuss the Company's determination that none of the internal candidates were qualified for the "A" Machinist position that Marthaller filled. (GC Ex. 4, p. 3 ("If the Union is questioning the department's conclusion that there were no qualified internal bidders, we can discuss that and the Company's basis for going outside to hire an A Machinist"). Kienbaum understood that the parties' collective-bargaining agreement did not provide a vehicle for the Union to challenge the qualifications of outside hires, since Article 10 and Index U both spoke to the qualifications and work experience of internal candidates, rather than external candidates the Company hired. (GC Ex. 6). As discussed above, Watts never accepted

Kienbaum's offer to sit down with the department to discuss the Union's concerns. (Watts, Tr. 81:22-25).

Even with presumptively relevant information, a union may need to show the relevance of the requested information if the employer establishes a proper rebuttal. *Acme Industrial Co.*, 385 U.S. at 435-36. *Detroit Edison v. NLRB,* 440 U.S. 301, 315 (1979) ("A union's *bare assertion* that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested."). If, for example, the information requested is irrelevant to any legitimate union collective-bargaining need, a refusal to furnish it is not an unfair labor practice. *Emeryville Research Center v. NLRB*, 441 F.2d 880 (9th Cir. 1971); *Michigan Bell Telephone Company*, 367 NLRB No. 74, slip op * 3 (2019). In *Michigan Bell*, the Board overruled the Administrative Law Judge and held that the employer rebutted the presumption that certain information was not relevant to the Union's grievance. The Board explained its reasoning as follows:

> Whether the Respondent had an obligation under [the collective bargaining agreement] to cooperate with the Union does not depend on the identity of the specific employee informant or the identities of the managers to whom the Respondent disseminated the Informant's tip. Further, the Union is already well aware of what steps, if any, Respondent took to cooperate with it to prevent [an overtime event] on January 10, and the Informant's identity and the distribution list would not shed any light on that inquiry.

367 NLRB No. 74, slip op *3.

Here, the information regarding Marthaller's qualifications and work history was not obviously relevant to the Union's grievance, and Kienbaum timely raised that issue with the Union and offered to discuss to obtain a better understanding of the Union's request. It was also consistent with the parties' practice to discuss pending information requests during labor-management meetings. (Kienbaum, Tr. 131:3-7; 144:22-23, Watts, 150:17-21). Despite her concerns about the relevance of Union's request, Kienbaum never refused to provide the

requested information and continued to press for dialogue with Watts to obtain a better understanding about the basis for the Union's request and explore accommodations. After Watts failed to take Kienbaum up on her June 27 offer to meet face-to-face, the parties' next meeting in August 2018 was cancelled due to travel issues. Consistent with their practice, the parties discussed the Union's request for information during their next scheduled meeting on September 13, 2018. Kienbaum testified credibly during the hearing that, after the parties discussed the machinist issue, Eddings limited the Union's request to Marthaller's resume and cover letter. Kienbaum provided that information to the Union the very next day. A few days later, on September 17, 2018, Kienbaum provided additional information to Watts in a show of good faith with the hope of resolving the underlying concerns about the outside hire.

As noted above, the Board considers the "totality of the pertinent circumstances" when determining whether a party unreasonably delayed to a request for information. *Endo Painting Service*, 360 NLRB at 486. The Board has also upheld an employers' delay in providing information as lawful where there is "an absence of any evidence that the union was prejudiced by the delay." *Union Carbide Co.*, 275 NLRB 197, 201 (1985) (noting that the union did not present any evidence of prejudice, meaning that the employer's ten month delay did not violate its duty to provide information); *see also United States Postal Service*, 2004 WL 1671531 (NLRB Div. of Judges July 19, 2004) (holding that an employer's four month delay did not violate Section 8(a)(5) because the union was not prejudiced by the delay); *Dallas & Mavis Forwarding Co.*, 291 NLRB 980 (1988) (seven month delay lawful given the circumstances).

Applying the "totality of pertinent circumstances" standard to this case, a three-month time period to provide all of the information that the Union requested is hardly an unlawful delay where the Company provided critical information about Marthaller's qualifications within days of the Union's original request, timely raised concerns about the relevance and scope of the

information that the Union had requested, and then provided the remaining information after the parties had a chance to meet face-to-face to discuss the Union's request pursuant to their regular practice. *See, e.g., Union Carbide Corp.*, 275 NLRB 197 (1985) (holding ten month delay was not unlawful under the Act); *Dallas & Mavis Forwarding Co.*, 291 NLRB 980 (1988) (seven month delay not unlawful).

The reasonableness of the Company's actions are further supported by the fact that there is no evidence whatsoever to suggest that the Union was prejudiced by the minor delay in receiving Marthaller's hiring information. Watts clearly did not need the information in order to determine if he would file a grievance since he had already filed a grievance on the same day of his request. Beyond that, the minor delay did not prevent the Union from discussing the grievance with the Company during their September grievance meeting, even though Watts admitted that he had cancelled grievance meetings in the past in order to gather more information for an investigation. (Watts, Tr. 148:21-149:5). Considering the totality circumstances of this case, and absent any prejudice to the Union, the Administrative Law Judge should dismiss the allegations against the Company.

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V. CONCLUSION

For the foregoing reasons, the Respondent asks the Administrative Law Judge to dismiss the Complaint in its entirety.

Dated: July 12, 2019.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

I certify that on July 12, 2019, a copy of the foregoing **RESPONDENT'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE** was served upon the following:

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