

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

**FCA US LLC
Respondent**

and

**CASES 07-CA-219895
07-CA-221914**

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

Charging Party

**RESPONDENT FCA'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION¹**

Respondent, pursuant to Section 102.46(e) of the Board's Rules and Regulations, files the following exceptions to the decision of Administrative Law Judge Melissa M. Olivero, in the above-captioned matter which issued on November 5, 2019. Respondent excepts to the following:

1. The ALJ's allowing of the amendment of the allegations contained in Paragraph 7(a) and (b) of the Consolidated Complaint, despite her acknowledgment that the allegations did not appear in either of the underlying charges. (ALJD p. 15, lines 15-18)

¹ ALJ" refers to Administrative Law Judge Melissa M. Olivero; "ALJD" refers to the ALJ's decision dated November 5, 2019. "Tr." refers to the transcript of the administrative hearing; "JX," "GCX," and "RX" refer to Joint exhibits, Counsel for the General Counsel's exhibits and Respondent's exhibits, respectively. The final four pages of the ALJD (19-22) are not line numbered. Respondent has manually counted the lines, but cautions that counting may inadvertently not be precise.

2. The ALJ's finding that the charge and Consolidated Complaint allegations are closely related and that Respondent would be expected to raise similar defenses to them.
(ALJD p. 13, lines 17-18)
3. The ALJ's finding and conclusion that Consolidated Complaint Paragraphs 7(a) and 7(b) that were not asserted in the underlying charges are closely related to the allegations in made in the Consolidated Complaint, and the GC properly moved to amend the Consolidated Complaint and amendment was proper. (ALJD 13, lines 17-22)
4. The ALJ's characterization of the Joint Team Leader Selection Committee (JTLSC) as "Respondent's JTLSC" when it is a joint committee of Respondent and the Union.
(ALJD p. 4, line 1)
5. The ALJ's failure to find that two Union representatives were members of the Joint Team Leader Selection Committee and had the requested documentation. (ALJD p. 4, lines 9-11, lines 15-16)
6. The ALJ's failure to draw an adverse inference from GC's failure to question shop chairman Lorenzo Jamison, Sr. regarding the meaning of "WWP" and thereby credit Nick Weber, Jr. that it meant "withdrawn without precedent." (ALJD p. 5, lines 13-19)
7. The ALJ's failure to find and conclude because the Union was also present during the interviews at issue and the documents were joint documents, the Union had access to and could have provided more information to Respondent during the time period that it did not have the information, but did not do so. (ALJD p. 14, lines 46-47; ALJD p. 15, lines 1-5)

8. The ALJ's finding and conclusion that she did not accept Respondent's defense that it merely made a mistake in not providing some of the team member forms. (ALJD p. 11, lines 39-44)
9. The ALJ's failure to find that, under the totality of the circumstances, Respondent made a good faith effort to timely provide the requested team leader interview forms to the Union. (ALJD p. 11, lines 39-44)
10. The ALJ's finding and conclusion that Respondent's delay in providing the team member interview forms concerning Watts was unreasonable and violated the Act. (ALJD p. 15, lines 5-7)
11. The ALJ's failure to dismiss the Consolidated Complaint allegation that Respondent's delay in providing the team member interview forms concerning Watts was unreasonable and violated the Act. (ALJD p. 15, lines 6-7)
12. The ALJ's reliance on a boilerplate statement stating that the "information I have requested has relevance to a grievance and its investigation. [The] Union needs this information to bargain intelligently and or adjust or resolve grievances" in the initial request for information to establish relevance of requests that were not presumptively relevant. (ALJD p. 5, line 40; ALJD p. 6, lines 1-4)
13. The ALJ's finding and conclusion that Respondent did not specifically respond to the request for discipline served by all employees for SOC violations. (ALJD p. 7, lines 4-5)
14. The ALJ's failure to find and conclude that the Union had incorrectly numbered the items in its initial information request, and Respondent, in its reply, combined the response of the listing of employees and disciplines served and sequentially

- numbered its response, providing the responsive disciplinary information pertaining to bargaining unit employees, but stating that Respondent did not see the relevance with regard to non-bargaining employees. (ALJD p. 5, lines 35-40; ALJD p. 7, lines 4-5, RX4, RX5)
15. The ALJ's failure to find and conclude that when Respondent questioned the relevance of the Union's information request for non-bargaining unit disciplines, the Union did not communicate to Respondent that it sought information on non-unit employees in order to see if salaried employees were treated the same as unit employees for violations of Respondent's SOC. (ALJD p. 6, lines 5-8)
 16. The ALJ's reliance on Mark Willingham's testimony at trial of the relevance of the Union's request for non-bargaining unit disciplines when the record establishes these reasons were never communicated to Respondent. (ALJD p. 6, lines 5-8)
 17. The ALJ's reliance on testimony at trial, never communicated to Respondent, regarding why the Union sought information on non-bargaining unit employees in order to establish relevance. (ALJD p. 6, lines 5-8)
 18. The ALJ's implication that the Union asserting an item is requested "for the purposes of handling grievances" in and of itself is sufficient to require an employer to provide that information, and her reliance on *TRW, Inc.*, 202 NLRB 729 (1973) for this proposition. (ALJD p. 17, lines 24-25)
 19. The ALJ's failure to properly analyze the Union's burden in establishing relevance where the Union requested information that was not presumptively relevant. (ALJD p. 15, lines 15-45; ALJD p. 17, lines 18-45; ALJD p. 18, lines 1-9)

20. The ALJ's finding and conclusion that "the Union was investigating Respondent's consistency in enforcing its SOC and disciplinary policies" when the record establishes that the Union never expressed to Respondent that it was investigating consistency in enforcement in response to Respondent's challenge to the relevance of the non-bargaining unit disciplines. (ALJD p. 17, lines 36-38)
21. The ALJ's finding of relevance of non-bargaining unit disciplines by relying upon her erroneous finding and conclusion that the Union was investigating Respondent's consistency in enforcing its SOC and disciplinary policies, which the Union had not expressed to Respondent, (ALJD p. 17, lines 36-38)
22. The ALJ's expansive and erroneous finding, misguidedly relying upon *NTN Bower Corp.*, 356 NLRB 1072 (2011), that "[i]nformation regarding a misconduct investigation, even of non-unit employees, is relevant to establishing whether there has been disparate treatment of employees." (ALJD p. 17, lines 38-40)
23. The ALJ's failure to find and conclude that, when Respondent questioned the relevance of non-bargaining unit disciplines, the Union failed to establish the sought information's relevance to Respondent. (ALJD p. 18, lines 5-7)
24. The ALJ's finding and conclusion that the Union's requests were all relevant and necessary to its role processing grievances for unit members. (ALJD p. 18, lines 18-19)
25. The ALJ's failure to find and conclude that, despite repeatedly questioning relevance to the Union, the Union still failed to establish to Respondent a factual and logical basis for needing the non-bargaining unit discipline information. (ALJD p. 18, lines 6-7)

26. The ALJ's failure to find and conclude that an employer has no duty to provide information to a union where the union has stated that it needs information to process a grievance, and the union has not demonstrated there is actual relevance to the grievance. (ALJD p. 18, lines 1-19)
27. The ALJ's finding and conclusion that "[a]fter the Union demonstrated the relevancy of the requested information," Respondent made "no such showing" that the information "was not relevant, did not exist, or for some other valid and acceptable reason could [not] be furnished to the requesting party." (ALJD p. 18, lines 9-13)
28. The ALJ's finding and conclusion that Respondent's failure to produce information regarding violations of its Standards of Conduct by non-unit employees and discipline of non-unit employees for violations of its Standards of Conduct violated Section 8(a)(5) and (1) of the Act. (ALJD p. 18, lines 13-16)
29. The ALJ's failure to dismiss the Consolidated Complaint allegation alleging that Respondent's failure to produce information regarding violations of its Standards of Conduct by non-unit employees and discipline of non-unit employees for violations of its Standards of Conduct violated Section 8(a)(5) and (1) of the Act. (ALJD p. 18, lines 13-16)
30. The ALJ's finding and conclusion that Respondent has "failed to elucidate a reason why it should be excused from providing, or timely providing, the information requested by the Union on February 20, April 17, and June 26." (ALJD p. 18, lines 16-18)

31. The ALJ's finding and conclusion that the Union's requests were all relevant and necessary to its role processing grievances for unit members. (ALJD p. 18, lines 18-19)
32. The ALJ's reliance on testimony at trial regarding why the Union sought on information regarding production numbers that was not communicated to Respondent, despite Respondent's challenge of relevance to the Union, in order to establish relevance. (ALJD p. 6, lines 12-15)
33. The ALJ's finding and conclusion that the information regarding plant production numbers relates directly to the Union's processing of her grievance, and, "therefore, Respondent had a duty to provide this information." (ALJD p. 14, lines 22-25)
34. The ALJ's finding and conclusion that the plant's production numbers were presumptively relevant. (ALJD p. 15, lines 33-35)
35. The ALJ's alternative finding that the Union established the relevance of the plant's production numbers through boilerplate language in its initial April 17 request stating the request was sought for the purpose of handling grievances. (ALJD p. 15, lines 33-35)
36. The ALJ's reliance on *TRW, Inc.*, 202 NLRB 729 (1973) for the seeming and erroneous proposition that a union has established the relevance of any information so long as it says it needs it for the purpose of handling grievances without specifying an actual nexus between the item requested and the grievance subject. (ALJD p. 15, lines 37-39)

37. The ALJ's failure to find and conclude that when Respondent questioned the relevance of production numbers, the Union failed to respond to Respondent's inquiry. (ALJD p. 6, lines 29-30)
38. The ALJ's finding and conclusion that the initial April 17 information request email's boilerplate was responsive to Respondent's challenge to the relevance of production numbers. (ALJD p. 6, Tr. 29-30; ALJD p. 15, lines 33-45)
39. The ALJ's finding and conclusion that the plant production number could have assisted the Union in defending Newkirt's grievance, as it would have shown the effect of her lack of alleged lack of effort on production, when the record establishes that the Union never raised this potential relevance argument to Respondent. (ALJD p. 15, lines 42-45)
40. The ALJ's finding and conclusion that Respondent did not reply to the Union's request for information relating to Newkirt's grievance for almost a month, when Respondent initially responded two weeks after the initial request, providing much of the requested information, and initially not understanding the portion of the request pertaining to taxi pulls or its relevance. (ALJD p. 18, lines 33-35; RX5)
41. The ALJ's finding and conclusion that Respondent violated the Act by failing to provide the taxi pull data for Newkirt and her shift over a two-week period. (ALJD p. 15, lines 25-28)
42. The ALJ's failure to find and conclude that Respondent provided all available information responsive to the taxi pull data request. (ALJD p. 15, lines 25-28)

43. The ALJ's failure to dismiss the Consolidated Complaint allegation alleging that Respondent violated the Act by failing to provide the taxi pull data for Newkirt and her shift over a two-week period. (ALJD p. 15, lines 25-28)
44. The ALJ's finding and conclusion that the plant production numbers for the Dundee Engine Plant were presumptively relevant. (ALJD p. 14, lines 9-10).
45. The ALJ's finding and conclusion that the plant production numbers information request item continued to be relevant when the Newkirt grievances were withdrawn without ability to be reinstated, and when the ALJ found and concluded that their relevance was to the Newkirt grievances. (ALJD p. 14, lines 11-13)
46. The ALJ's finding and conclusion that the production numbers were directly relevant to the Union's processing of Newkirt's grievance, when the Union had not substantively responded to Respondent's challenge to their relevance, and this was not presumptively relevant information. (ALJD p. 14, lines 22-24)
47. The ALJ's finding and conclusion that Respondent's refusal to provide plant production number data for a two-week period, as requested by the Union, violated the Act. (ALJD p. 15, lines 44-45)
48. The ALJ's failure to dismiss the Consolidated Complaint allegation alleging that Respondent's refusal to provide plant production number data for a two-week period, as requested by the Union, violated the Act. (ALJD p. 15, lines 44-45)
49. The ALJ's clearly erroneous statement "Lanway did not mention that Weber was under investigation for alleged fraud in her email." Nick Weber, Jr. was the Labor Relations Supervisor and was in no way under investigation for fraud and the record

- is devoid of any evidence supporting this statement. Mr. Wilson was under investigation for alleged fraud. (ALJD p. 9, lines 18-19)
50. The ALJ's application of *American Baptist Homes of the West (Piedmont Gardens)*, 362 NLRB 1135 (2015), enfd. in relevant part 858 F.3d 612 (D.C. Cir. 2017), to determine whether Respondent was obligated to disclose confidential witness statements to the Union. (ALJD p. 16, lines 1-15, 31-35)
51. The ALJ's failure to apply *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978) to find an employer has no obligation to turn over witness statements obtained in investigations of possible workplace misconduct to the employees' collective-bargaining representative. (ALJD p. 16, lines 1-15; ALJD p. 20, lines 14-20)²
52. The ALJ's finding and conclusion that after Wilson's final interview on July 16, Respondent would no longer have any reason to withhold his statements when the record establishes that the investigation remained open and pending until October 31, 2018, and the statement was disclosed to the Union on November 2, 2018. (ALJD p. 16, lines 21-22; GCX10)
53. The ALJ's finding of significance that Respondent provided the Union with copies of other interview statements in a separate investigation concerning FMLA fraud on the same day as they were given, when *Piedmont Gardens* explicitly requires a case-by-case analysis of confidentiality interests implicated in each situation. (ALJD p. 16, lines 22-24; ALJD p. 17, lines 8-10)

² Respondent notes that the final four pages of the issued ALJD (19-22) are not line numbered. Respondent has manually counted the lines, but cautions that the counting inadvertently may not be precise.

54. The ALJ's finding that Respondent offered no explanation for providing the other two FMLA statements, but not Wilson's statements, to the Union. (ALJD p. 16, lines 24-25)
55. The ALJ's finding and conclusion that it was Respondent's burden to formulate a reasonable accommodation to protect the party's confidentiality interest, when *Piedmont Gardens* required Respondent to bargain an accommodation, and the Union refused to counter Respondent's proposed accommodation or otherwise bargain with Respondent. (ALJD p. 16, lines 37-47)
56. The ALJ's reliance on *Borgess Medical Center*, 342 NLRB 1105 (2004), a case in which the employer failed to offer to bargain an accommodation, to find that the Union's failure to offer a counterproposal is "of no moment." (ALJD p. 17, lines 2-5)
57. The ALJ's finding that Respondent's offer of the accommodation to provide the statement at the conclusion of the investigation was a "flat refusal" to provide the statement when the statement was, in fact, provided at the conclusion of the investigation, and the Union failed to identify how its interests were harmed by the implementation of the proposed accommodation. (ALJD p. 16, line 47; ALJD p. 17, line 1, 7-8)
58. The ALJ's finding and conclusion that Respondent's delay in providing Mr. Wilson's FMLA fraud witness statement constituted a violation of Section 8(a)(5) and (1). (ALJD p. 17, lines 13-16)
59. The ALJ's failure to dismiss the Consolidated Complaint allegation alleging that Respondent's delay in providing Mr. Wilson's FMLA fraud witness statement constituted a violation of Section 8(a)(5) and (1). (ALJD p. 17, lines 13-16)

60. The ALJ's findings and conclusion of law that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with relevant information as requested on February 20, 2018, April 17, 2018, and June 26, 2018.³ (ALJD p. 20, lines 22-24, 37-39)
61. The ALJ's failure to dismiss the Consolidated Complaint allegations that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with relevant information or unreasonably delaying in providing information as requested on February 20, 2018, April 17, 2018, and June 26, 2018. (ALJD p. 20, lines 22-24, 37-39)
62. The ALJ's finding and conclusion that the GC established the Union had an ongoing need for the outstanding information alleged in the Consolidated Complaint, and that the withdrawal of Newkirk's grievances did not moot Respondent's obligation to provide the requested information. (ALJD p. 19, lines 6-7)
63. The ALJ's reliance on boilerplate in the initial request for information pertaining to grievances to establish continuing relevance of the requested information when the grievances over Kelli Newkirk's discipline were withdrawn with no ability to be reinstated under the contract (under any definition of "WWP") and the Union failed to define any continuing relevance. (ALJD p. 8, lines 11-18)
64. The ALJ's reliance on *U.S. Postal Service*, 332 NLRB 635 (2000), for the proposition that the Union's request for information was not mooted and as analogous to the instant case. (ALJD p. 19, lines 4-28)

³ Respondent notes that the final four pages of the issued ALJD (19-22) are not line numbered. Respondent has manually counted the lines, but cautions that the counting inadvertently may not be precise.

65. The ALJ finding analogous *U.S. Postal Service*, 332 NLRB 635 (2000), where that union expressly stated it had reason to believe management was treating supervisors differently than craft employees, and that union's request for non-supervisory disciplines were thus relevant to all bargaining unit members, and there are no such facts present here. (ALJD p. 19, lines 7-14; Tr. 79, 80, 137-138)
66. Despite the ALJ's finding and conclusion acknowledging that the Union did not state that the information request had to do with a "problem of disparate treatment affecting the larger unit," the ALJ's finding and conclusion that the Union was requesting information related to the larger bargaining unit because she asserted it pertained to disparate treatment and the Union stated it needed it for "grievances." (ALJD p. 19, lines 20-26)
67. The ALJ's failure to find merit to Respondent's mootness defense. (ALJD p. 19, lines 24-26)
68. The ALJ's finding and conclusion that *Borgess Medical Center*, 342 NLRB 1105 (2004) is distinguishable from the instant case.
69. The ALJ's finding and conclusion that the Union still requires the information sought by the April 17 information request when the GC failed to establish this, the record is devoid of evidence to support this finding and conclusion, and the Union failed to respond when Respondent questioned the relevance after the Newkirt grievances were withdrawn. (ALJD p. 19, lines 38-43; ALJD p. 8, lines 1-18, RX25, RX20)
70. The ALJ's finding and conclusion that the Union still required the information sought by the April 17 information request when the ALJ, and the record, failed to address how the taxi pulls, the production numbers, the list and disciplines of non-bargaining

unit individuals disciplined for violations of Standards of Conduct #3, 5, 6, 11, and 14 for two years continued to be relevant after the withdrawal continues to be relevant to the Union's collective bargaining duties when the Newkirk grievances have been withdrawn without the ability to be reinstated. (ALJD p. 19, lines 38-40; ALJD p. 20, lines 1-5)

71. The ALJ's finding and conclusion that the information requested by the Union on April 17 remained relevant after the settlement of Newkirk's grievance because the Union tied its request to an of the larger bargaining unit by requesting information regarding disparate treatment and stating that it needed the information to resolve or adjust grievances. (ALJD p. 20, lines 1-4)
72. The ALJ's finding and conclusion that Respondent did not provide all relevant information from the April 17 request to the Union. (ALJD p. 20, lines 1-5)
73. The ALJ's contradiction of the GC's argument and the Union's testimony with regard to the scope of the April 17, 2018 information request in order to find and conclude that the April 17, 2018 request items were not moot. (ALJD p. 19, lines 38-43; ALJD p. 8, lines 1-18; ALJD p. 20, lines 1-4)
74. The finding/conclusion that any of the elements of the proposed remedy, order, and notice are legally proper and should be adopted or enforced. (ALJD p. 20, lines 47-49, ALJD p. 21, lines 1-39; ALJD p. 22, lines 1-20, and the Appendix)

Respectfully submitted this 3rd of January, 2020

A handwritten signature in black ink, appearing to read "Darlene Haas Awada". The signature is fluid and cursive, with the first name "Darlene" being the most prominent.

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CERTIFICATE OF SERVICE

I certify that on the 3rd day of January, 2020, I electronically served copies of **RESPONDENT FCA'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** on the following parties of record:

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