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Oncor Electric Delivery, LLC and International Brotherhood of Electrical Workers, Local Union No. 69. Case 16–CA–212174

March 6, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On April 4, 2019, Administrative Law Judge Robert A. Ringler issued the attached decision. The Respondent filed exceptions with supporting argument, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The Union filed cross-exceptions with supporting argument, and the Respondent filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions only to the extent consistent with this Decision and Order.¹

I. BACKGROUND

The Respondent is an electric utility company with a facility in Dallas, Texas. On May 4 and October 6, 2017,² the Union filed grievances³ over the Respondent’s assignment of “storm evaluation work” to non-unit workers in violation of the parties’ collective-bargaining agreement. In conjunction with the grievances, the Union submitted 14 information requests on June 5. On August 28, the Union restated these requests and added five information requests. Of these 19 requests, only 13 are at issue here.⁴ They are as follows:

1. [N]ames of . . . *non-bargaining unit* Oncor employees who have performed storm evaluation work for Oncor from January 1, 2016 to the present.

¹ We shall modify the judge’s recommended Order to conform to our findings and to the Board’s standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

The Union cross-excepts to the judge’s proposed remedy, specifically his failure expressly to order the Respondent to provide information in response to its requests up to the present and to update that information on a monthly basis. We believe that our standard remedial language is sufficient to remedy the violations found. Any issues regarding the extent of the Respondent’s obligation may be resolved in compliance.

² All dates are 2017 unless otherwise indicated.

³ The May 4 grievance stated that “[s]ince, on or about March 29, 2017, the Company violated [the contract] when they utilized office personnel to troubleshoot the electrical grid in Fort Worth, Texas, after a

2. [Their] regular position with Oncor at the time he/she performed storm evaluation work.

3. [D]ates and amount of time worked by each in storm evaluation work since January 1, 2016[.]

4. [R]egular pay rate[s] for such employee[s] from January 1, 2016 to the present.

5. [W]hether Oncor provided any additional pay or compensation, and if so, how much (and what such pay was called . . .), to such employee[s] for storm evaluation work.

6. Oncor’s reason, if any, for not using bargaining unit members to perform such work.

7. [S]pot bonuses, work orders, memos, emails, and other records describing the work done [for] each incident of storm evaluation.

8. [S]eniority date . . . present job position, and . . . any training he/she has been provide by Oncor that Oncor contends is sufficient to permit him/her to properly and safely perform storm evaluation work.

9. [I]ndividuals that Oncor has provided Damage Evaluation Training from July 1, 2015, through the present.

10. [I]ndividuals that Oncor has provided I-Dispatch Storm Support Training from July 1, 2015, through the present.

11. [I]ndividuals that Oncor has provided Mobile TC Storm Training from July 1, 2015 through the present.

12. [N]ames of all new Oncor employees assigned as Damage Evaluators on or after January 1, 2016.

13. [N]ames of all “more experienced employees who have served as Damage Evaluators during previous storms” . . . on or after January 1, 2016.

We adopt the judge’s findings that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to comply with the Union’s Requests 1–5 and 8–13.⁵ However,

storm.” The October 6 grievance broadened the May 4 grievance, stating that “[s]ince, on or about March 29, 2017, and in other instances now known to the Union, plus instances the Company has not disclosed to the Union but that the Union is seeking to identify, the Company has violated [the contract] by utilizing non-bargaining unit personnel for damage evaluation and/or storm evaluation work.” The Respondent denied these grievances.

⁴ Requests 9 through 14 made on June 5 are not at issue here. As a result, the complaint, the judge’s decision, and the parties’ briefs refer to the five additional August 28 requests as numbers 9 through 13. For consistency, we will do the same.

⁵ For request 1, we agree with the judge that the information is relevant to investigate the Union’s grievances alleging the use of nonunit

for the reasons discussed below, we reverse the judge's finding that the Respondent violated the Act by failing to provide all of the information sought by requests 6 and 7.

I. INFORMATION REQUEST 6

Request 6 sought the Respondent's reason for not using bargaining unit members to perform storm evaluation work. The judge found that the requested information could have facilitated bargaining and productive discussions on the issue of diversion of unit work. The Respondent argues that it did not provide its reasoning for using nonunit employees because it did not exist and, further, claims that it could not respond to this request because the Union failed to specify the relevant storms.

We find merit in the Respondent's exception. With regard to the work at issue, the parties' collective-bargaining agreement states: "Supervisors and other Company employees not covered under this Labor Agreement will not perform work normally performed by bargaining unit employees where such work would result in the reduction of the regular work hours of an employee covered by this agreement." The Respondent has conceded that it used nonunit employees to perform storm evaluation work. Therefore, the only question to be answered is whether the Respondent's use of nonunit employees led to a reduction of the regular work hours of unit employees. Because we fail to see how the Respondent's reasons for assigning work to nonunit employees are relevant to that determination, we find that the Respondent did not violate the Act by failing to provide the information described in request 6.⁶

II. INFORMATION REQUEST 7

In the June 5 information request, Request 7 asked the Respondent to provide, among other documents, work orders for each incident of storm evaluation. The work orders contained a great deal of information, including the names of the employees (both unit and nonunit) who performed the work, the amount of time it took to perform the work, the location or address of the work, and the names of customers. In its June 23 response, the Respondent objected to the request, asserting that it was both unduly burdensome and sought nonrelevant information about non-bargaining unit employees. Nevertheless, the Respondent agreed that it would make the work orders available for

employees to perform bargaining unit work. See *AGA Gas*, 307 NLRB 1327, 1327 fn. 2 (1992) (finding requested information about nonunit employees relevant to determine whether the employer's actions violated the collective-bargaining agreement and whether the union had a viable grievance). Member Kaplan agrees that this result is consistent with current Board precedent and joins his colleagues in finding a violation. However, he believes that a heightened requirement for finding nonunit employee names relevant may better protect the privacy interests of those

the Union to review in person at a mutually agreeable time and location. On August 28, the Union asked for the work orders to be provided "electronically in a searchable form" and, thereafter, the Respondent and Union continued to exchange letters about the many information requests and grievances. Then, on February 26, 2018, the Respondent replied that it had approximately 120,000 work orders from January 1, 2016, through the present and reminded the Union of its earlier offer for the Union to review the work orders in person. Because the work orders contain customer information such as names, addresses and telephone numbers, the Respondent further stated that it would have to redact this information from the work orders before copying them. The Respondent estimated that this redacting and copying would take approximately 1 month and cost \$16,000, which the Respondent expected the Union to pay. The Union never responded to this offer.

On June 21, 2018, the Union offered to enter into a confidentiality agreement regarding the names of the nonunit employees. On July 9, 2018, the Respondent asked the Union to draft a confidentiality agreement. At the time of the hearing, the Union had neither drafted nor submitted a confidentiality agreement to the Respondent. At the hearing, the Union stated that it did not draft a confidentiality agreement because it wanted to wait until the hearing for the judge's ruling on the matter.

In finding that the Respondent's conduct with regard to information request 7 violated the Act, the judge found that the Respondent failed to prove its conclusory claim of undue hardship. The judge also questioned why the Respondent would need to redact customer information from the work orders, given that employees routinely see that information, and he further found that there was no basis for keeping the nonunit employees' names on the work orders confidential because such information was relevant. The judge noted that, even assuming that an undue hardship had been established, the Respondent remained obligated to bargain over the cost of producing the documents.

Although we agree with the judge that the requested information is relevant, we disagree with the judge's finding that the Respondent failed to articulate a legitimate confidentiality concern with respect to the customer information. We further find that the Respondent fulfilled its

employees, and he would be willing to revisit this issue in a future appropriate case.

⁶ Member Kaplan agrees with his colleagues. He would also find that the Respondent did not violate the Act because request 6 does not seek documents in the Respondent's possession but rather asks the Respondent to provide the reasoning behind the Respondent's actions. This request, which amounts, in effect, to pretrial discovery, is not permissible. Cf. *California Nurses Assn.*, 326 NLRB 1362 (1998) (finding no general right to pretrial discovery in arbitration proceedings).

obligation to offer to accommodate its confidentiality concerns and its bargaining obligations.

Where a union requests relevant but assertedly confidential information, the Board must balance the confidentiality interests established by the employer against the union's need for the information. *GTE California, Inc.*, 324 NLRB 424, 426 (1997). The Board has further held that “when a union is entitled to information concerning which an employer can legitimately claim a partial confidentiality interest, the employer must bargain toward an accommodation between the union’s information needs and the employer's justified interests.” *Pennsylvania Power Co.*, 301 NLRB 1104, 1105–1106 (1991).

We find that the Respondent has established a confidentiality interest regarding customer information. The Respondent maintains a policy addressing this specific interest, entitled, “Security of Sensitive Employee Information and Sensitive Customer Information,” the stated purpose of which is to “provide guidance regarding the handling, security and destruction of documents containing . . . Sensitive Customer Information. The Company will take appropriate measures to protect . . . Sensitive Customer Information against unauthorized access to or use, and to ensure its proper disposal.” The policy further states that “all employees are responsible for safeguarding confidential, proprietary and material nonpublic information,” classifies “Sensitive Customer Information” as “proprietary information,” and specifically lists customer addresses and telephone numbers as among the types of information that employees are required to protect. *GTE California, Inc.*, supra, 324 NLRB at 426–427 (confidentiality interest shown both by employer’s treatment of the information and by nature of information itself, which was deemed confidential under state statute).

Furthermore, in determining whether an employer has established a confidentiality claim, the Board has considered State laws deeming certain information confidential. See *Olean General Hospital*, 363 NLRB No. 62, slip op. at 7–8 (2015); *Kaleida Health, Inc.*, 356 NLRB 1373, 1378–1379 (2011); *Borgess Medical Center*, 342 NLRB 1105, 1105 (2004). The Respondent is required by the Texas Public Utility Commission to safeguard and protect proprietary customer information and to refrain from releasing such information without the authorization of the

customer.⁷ See PURA Sec. 39.107(a); 16 T.A.C. Sec. 25.272(g). Records reviewed by any third party must be redacted in such a way as to protect the customer’s identity. 16 T.A.C. Sec. 25.272 (g)(1). Further, the regulation expressly limits employers' ability to release customer information, allowing employers to “release proprietary customer information without customer authorization to a federal, state, or local governmental entity or in connection with a court or administrative proceeding involving the customer or the utility” only under the condition that “the utility shall take all reasonable actions to protect the confidentiality of such information, including, but not limited to, providing such information under a confidentiality agreement or protective order, and shall also promptly notify the affected customer in writing that such information has been requested.” 16 T.A.C. Sec. 25.272 (g)(1)(B).

The Union requested work orders containing sensitive information such as customer names, addresses, and telephone numbers. Under the Respondent’s own policies as well as the requirements imposed upon it by the State of Texas, the Respondent has an obligation to keep its customers’ personal information confidential.⁸ We therefore find that the Respondent had a legitimate and substantial confidentiality concern regarding its proprietary customer information.⁹

We further find that the Respondent fulfilled its obligation to bargain towards an accommodation that would satisfy the Union’s need for the information while protecting the Respondent’s confidentiality concerns. *Pennsylvania Power Co.*, supra, 301 NLRB at 1105–1106. The Respondent sought to accommodate the Union's need for information about the work orders on several occasions. In a letter to the Union dated June 23, the Respondent offered the Union the opportunity to examine its work orders in person. The Union responded by requesting that the Respondent provide the work orders electronically in a searchable format. On February 26, 2018, by letter, the Respondent offered to provide hard copies of the documents in redacted form in addition to an in-person review. The Union did not respond to this request. Thus, much as it did with the offer to enter into a confidentiality agreement regarding the nonunit employee names, the Union appeared to be biding its time until the Board resolved the matter. Choosing not to respond to the Respondent’s

⁷ The statute defines “proprietary customer information” as “[a]ny information . . . that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, . . . billing records, or any other information that the customer has expressly requested not be disclosed.” 16 T.A.C. Sec. 25.272 (c)(5).

⁸ Further, such policies certainly create a reasonable expectation of privacy among Respondent's customers that it would protect their

confidential information. It is possible that failing to protect this information could also result in legal action against the Respondent by the customers.

⁹ We do not believe that the Respondent’s initial offer of an in-person review of the work orders in any way undermines the confidentiality interest at stake here. We view such a review as something quite different from giving the Union unrestricted access to, and possession of, an electronically searchable database or providing the Union with unredacted hard copy work orders containing sensitive customer information.

offers of accommodation, however, effectively shut down the Respondent's efforts to respond to the Union's information request under an accommodation acceptable to both parties.

Accordingly, we find that the Respondent has established its confidentiality claim and has met its duty to bargain towards an accommodation with the Union. We therefore conclude that the Respondent did not violate Section 8(a)(5) of the Act by not providing the Union with the information it requested.

ORDER

The National Labor Relations Board orders that the Respondent, Oncor Electric Delivery, LLC, Dallas, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) 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) To the extent it has not already done so, furnish to the Union in a timely manner the information requested in those portions of the Union's August 28, 2017 information requests that the Respondent, as found in this decision, was legally obligated to furnish.

(b) Within 14 days after service by the Region, post at its Dallas, Texas facility and other facilities where the unit performs work copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in

these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 28, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 6, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives 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 refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested in those portions of the Union's August 28, 2017 information requests that the National Labor Relations Board found that we were obligated to provide.

ONCOR ELECTRIC DELIVERY, LLC.

The Board's decision can be found at www.nlr.gov/case/16-CA-212174 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



Maxie E. Gallardo, Esq., for the General Counsel.
Amber M. Rogers, Esq. (Hunton, Andrews & Kurth, L.L.P.), for the Respondent.
H. K. Gillespie, Esq. (Gillespie & Sanford, L.L.P.), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard in Fort Worth, Texas, on August 22, 2018. The complaint alleged that Oncor Electric Delivery, LLC (Oncor or the Respondent) violated Section 8(a)(5) of the National Labor Relations Act (the Act) by failing to provide relevant requested information to the International Brotherhood of Electrical Workers, Local Union No. 69 (the Union). On the entire record, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

At all material times, Oncor, a corporation with a Dallas, Texas facility, has been an electric utility company. Annually, it derives gross revenues in excess of \$250,000, and receives at its Dallas facility goods valued over \$5000 directly from points outside of Texas. It, thus, admits, and I find, that it is an employer engaged in commerce, within the meaning of Section 2(2), (6),

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

and (7) of the Act. It also admits, and I find, that the Union is a Section 2(5) labor organization.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Labor Relations History

Oncor and the Union have a longstanding bargaining relationship. The Union is the designated exclusive bargaining representative of this appropriate unit of workers (the unit):

INCLUDED: All regular employees . . . including Lineman Troublemaker, Journeyman Lineman, Serviceman, Apprentice 6, Apprentice 5, Apprentice 4, Apprentice 3, Apprentice 2, Apprentice 1, Lineman Helper 2 Lineman Helper 1, Service Specialist Sr., Service Specialist, Utility, Mechanic Garage, Field Dispatcher-Distribution, Cable Splicer Sr., Cable Splicer 6, Cable Splicer 5, Cable Splicer 4, Cable Splicer 3, Cable Splicer 2, Cable Splicer 1, Network Helper 2, Network Helper 1, Meter System Specialist Sr., Meter System Specialist 2, Meter System Specialist 1, Storekeeper Sr., Storekeeper, Distribution Specialist Sr., Cable Pulling Sr., Equipment Operator, and Network Specialists Sr.

EXCLUDED: All other employees, office clerical employees, guards and supervisors as defined in the Act.

(Jt. Exh. 1.) Oncor's recognition of the Union's status was memorialized in the parties' most recent contract, which ran from October 25, 2017 to October 25, 2018 (the CBA). (Id.) This litigation involves Oncor's usage of nonunit workers to perform unit storm damage work and the Union's efforts to gain information about its practice for connected grievances.

B. May 4, 2017—Union's First Grievance

This grievance stated that Oncor violated the CBA, when, on March 29, 2017, it assigned unit work to a nonunit worker, i.e., "to troubleshoot the electrical grid." (GC Exh. 13.) This practice was alleged to violate article 10's unit work and safety provisions.² (Jt. Exh. 1.) On May 23, 2017, Oncor denied the grievance. (GC Exh. 15.)

C. June 5, 2017—Union's Information Request

Following Oncor's denial, the Union requested this information:

1. [Request 1] . . . [N]ames of . . . non-bargaining unit Oncor employees who have performed storm evaluation work . . . [since] January 1, 2016. . . .
2. [Request 2] . . . [Their] regular position[s] . . . [when] perform[ing] storm evaluation work. . . .
3. [Request 3] . . . [D]ate(s) and amount of time worked by each in storm evaluation work since January 1, 2016. . . .
4. [Request 4] . . . [R]egular pay rate[s] for such employee[s] from January 1, 2016 to the present. . . .
5. [Request 5] . . . [W]hether Oncor provided any additional pay . . . and if so, how much (and what such pay was called . . .

² It is undisputed that storm damage work is generally performed by the unit.

) . . . for . . . [such] work.

6. Request 6 . . . Oncor's reason, if any, for not using bargaining unit members to perform such work

7. Request 7 . . . [S]pot bonuses, work orders, memos, emails and other records describing the work done [for] . . . each incident of storm evaluation work [at issue herein]. . . .

8. Request 8 . . . [S]eniority date . . . [,] position, and . . . training . . . that . . . permit[s non-Unit employees to] safely perform storm evaluation work. . . .

(GC Exh. 2.) Oncor's June 23, 2017 reply failed to provide responsive data. (GC Exh. 3.)

D. August 28, 2017—Union's Followup

The Union then sent this letter restating its earlier requests and adding five new ones:

[1. Requests 1 to 8] . . . [N]ames of . . . non-unit . . . employees . . . perform[ing] storm . . . work [since] . . . January 1, 2016 [and their personnel data is] . . . relevant [to assess the CBA violation and] . . . quantify damages . . .

[9. Request 9] [I]ndividuals . . . [receiving] Damage Evaluation Training [since] . . . July 1, 2015. . . .

[10. Request 10] [I]ndividuals . . . [receiving] I-Dispatch Storm Support Training [since] . . . July 1, 2015. . . .

[11. Request 11] [I]ndividuals . . . [receiving] Mobile TC Storm Training [since] . . . July 1, 2015. . . .

[12. Request 12] . . . [N]ames of all new Oncor employees assigned as Damage Evaluators [since] . . . January 1, 2016.

[13. Request 13] . . . [N]ames of all "more experienced employees who have served as Damage Evaluators during previous storms" . . . [since] January 1, 2016.

(GC Exh. 4 (footnotes omitted)).

E. October 6, 2017—Union's Second Grievance

The Union supplemented its earlier grievance, and stated that:

This letter is . . . a . . . grievance . . . [under] Article IV citing

violations of Article I . . . , Article III . . . , Article V . . . , Article VII . . . , [and] Article X. . . .

Since . . . March 29, 2017, . . . [Oncor] has violated the above Articles . . . by utilizing non-bargaining unit personnel for damage . . . [and] storm evaluation. . . .

Storm evaluation work is . . . unit work.

This is a [continuing] . . . violation. . . .

GC Exh. 14.) On October 30, 2017, Oncor denied this grievance. (GC Exh. 16.)

F. January 5, 2018—Oncor's Next Reply

Oncor then sent the Union 1000 pages of mostly irrelevant documents that were previously sent to the Public Utility Commission of Texas. (GC Exh. 7.) Its reply was a mosaic of letters, jobs descriptions, and training materials, which omitted information on the identities of nonunit employees performing storm evaluation work, and their personnel and training data. (Id.) On February 9, 2018, the Union told Oncor that its reply was non-responsive. (GC Exh. 8.)

G. February 26, 2018—Oncor's Response

Oncor then offered to allow the Union to either review responsive work orders, or pay for copying and redaction costs. Its letter stated that:

[T]he Company. . . [will] let the Union review relevant work orders. Alternatively, . . . there are approximately 120,000 [responsive] work orders. . . . We estimate that it will take approximately one month . . . to print and redact the customer information from the work orders. The Company will charge \$.11 per page to print each work order . . . [W]e anticipate that it will cost . . . \$16,000 . . . The Company will require payment before it incurs these costs. . . .

(GC Exh. 9.)

H. May 11, 2018—Oncor's Followup

Oncor then sent a letter enclosing some relevant data, which is summarized below:

Request	Reply
<u>Request 1</u> —"Names of . . . non-bargaining unit Oncor employees . . . perform[ing] storm evaluation work . . . [since] January 1, 2016."	<i>Data not provided (i.e., non-unit names not provided)</i>
<u>Request 2</u> —"Their regular position[s] . . . [when] perform[ing] storm evaluation[s]. . . ."	<i>Data not provided (i.e., regular position provided without associated names).</i>
<u>Request 3</u> —"The amount of time worked by each [non-unit employee] in storm evaluation work since January 1, 2016."	<i>Data not provided.</i>
<u>Request 4</u> —"The regular pay rate for such [non-unit] employee[s] [since] . . . January 1, 2016."	<i>Data not provided (i.e., regular rate provided without associated names).</i>
<u>Request 5</u> —"Additional pay [if any] . . . (and what such pay was called . . . to such [non-unit] employee[s] for storm evaluation work."	<i>Data not provided (i.e., additional pay provided without associated names, and name of pay not provided).</i>
<u>Request 6</u> —"Oncor's reason . . . for not using bargaining unit members to perform such work."	<i>Data not provided.</i>
<u>Request 7</u> —"All records . . . describing the work done or to be done . . . [by non-unit employees for] . . . storm evaluation work. . . ."	<i>Data not provided.</i>

Request 8—“[Describe each non-unit employee’s] <i>seniority date</i> with Oncor, . . . <i>job position</i> , and . . . <i>training</i> . . . provided . . . to permit [them to] . . . perform storm evaluation work.”	<i>Data not provided (i.e., hire date given without names).</i>
Request 9 – “All lists of individuals that Oncor has provided <i>Damage Evaluation Training</i> [since] . . . July 1, 2015.”	<i>Data not provided (i.e., training sessions and dates provided without names).</i>
Request 10—“All lists of individuals that Oncor has provided <i>I-Dispatch Storm Support Training</i> [since] . . . July 1, 2015.”	<i>Same as above.</i>
Request 11—“All lists of individuals that Oncor has provided <i>Mobile TC Storm Training</i> [since] . . . July 1, 2015.”	<i>Same as above.</i>
Request 12—“[N]ames of all new Oncor employees assigned as <i>Damage Evaluators</i> [since] . . . January 1, 2016.”	<i>Data not provided (i.e., no names).</i>
Request 13—“[N]ames of all ‘more experienced employees who have served as <i>Damage Evaluators</i> during previous storms.’”	<i>Data not provided (i.e., no names).</i>

(GC Exh. 10.) Although Oncor supplied some relevant material, it omitted the names of the nonunit workers, which was critical. This omission precluded the Union from, inter alia: contacting nonunit employees to further its investigation of the grievances; requesting additional information about specific nonunit workers; independently analyzing the qualifications of nonunit workers to safely perform such work; verifying Oncor’s claims regarding how much work was performed by requesting specific payroll records; or subpoenaing specific non-unit employees to testify about their performance of unit work at a grievance or arbitral hearing.

I. June 21, 2018—Union’s Reply

The Union explained that Oncor’s reply was deficient; it stated that:

[Y]our supplemental responses [do not] resolve this matter. . . .
 FIRST: Attachment 1 is confusing and requires explanation. . . .
 . . .
 SECOND: Without the names of the individuals who have performed storm evaluation work, the Union lacks the information we need. The Union . . . needs to identify which non-bargaining unit Oncor employees received how much compensation and when and where such work has been performed. . . .

(GC Exh. 11.)

J. July 9, 2018—Oncor’s Reply

Oncor responded as follows:

[T]he Company assigned numbers . . . , rather than providing . . . names. . . .
 The names of the non-bargaining unit employees are not necessary to determine compensation, as that information has already been supplied. Regarding the Union’s request to know when and where the work was performed . . . [.] this request . . . is unduly burdensome, . . . and is not relevant. To determine when and where each person worked will require evaluating each work order from January 1, 2016, which the Company has already stated . . . will take potentially hundreds of hours to compile. The Company will make the work orders available . . . for the Union to review after the confidentiality agreement is executed. . . .

(GC Exh. 12.)

K. Parties’ Positions

Union Business Manager Bobby Reed testified that the CBA bars nonunit employees from performing unit work. He cited a

recent incident, where a unit worker was almost killed by an electric arc while working on a jobsite that had been unsafely closed by nonunit storm workers. He said that these concerns prompted the Union’s data requests.

Oncor Senior Labor Relations Manager Barbara Gibson testified that Oncor’s reply allowed the Union to assess safety training and how much unit work was diverted. She averred that identifying nonunit workers was unwarranted.

III. ANALYSIS

A. Legal Precedent

1. Unit information

Generally, an employer must provide requested information to a union representing its employees, whenever there is a probability that such information is necessary and relevant to its representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). This duty encompasses the obligation to provide relevant grievance-processing materials. *Postal Service*, 337 NLRB 820, 822 (2002). Information, which concerns unit terms and conditions of employment, is “so intrinsic to the core of the employer-employee relationship” that it is presumptively relevant. *U.S. Information Services*, 341 NLRB 988 (2004).

2. Information outside of the unit

Information about persons outside the bargaining unit, however, does not enjoy a presumption of relevance. *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006). Nevertheless, the burden to establish the relevance of extra-unit information is “not exceptionally heavy.” *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), *enfd.* 715 F.2d 473 (9th Cir. 1983). In these cases, the Board uses a broad, discovery-type of standard to assess relevance. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Once the burden of showing the relevance of nonunit information is satisfied, the duty to provide the information is the same as it is with presumptively relevant unit information. *Caldwell Mfg. Co.*, *supra*, 346 NLRB at 1159–1160.

3. Employer defenses

a. Undue burden

The onus rests upon the employer to show that production would be unduly burdensome, although it must still offer to cooperate with the union in reaching a mutually acceptable accommodation. *Yeshiva University*, 315 NLRB 1245, 1248 (1994); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1094 (1st Cir. 1981), *abrogated on other grounds NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 786 *fn.* 7 (1990). Where

the employer presents a legitimate, good-faith undue burden objection and offers to cooperate regarding a fair accommodation, it is incumbent upon the union to reach a compromise regarding form, extent and timing. *Soule Glass*, 652 F.2d at 1098. The cost and burden of compliance, however, will ordinarily not justify an initial, categorical refusal to supply information. *Yeshiva University*, supra; *Tower Books*, 273 NLRB 671 (1984). Moreover, if there are substantial costs involved in compiling certain information, the parties must bargain in good faith over who shall bear such costs. *Yeshiva University*, supra; *Food Employers Council*, 197 NLRB 651 (1972).

b. Confidentiality

Confidentiality can justify a refusal to provide relevant information. See *Jacksonville Area Assn. for Retarded Citizens*, 316 NLRB 338, 340 (1995), citing *NLRB v. Detroit Edison Co.*, 440 U.S. 301 (1979). When a claim of confidentiality has been made, “the trier of fact must balance the union’s need for the information sought against the legitimate and substantial confidential interests of the employer (footnote omitted).” *Jacksonville*, supra. Under this balancing test, the burden of proof rests with the party raising confidentiality. *Id.* Confidentiality must be timely raised and proven before the balancing test is triggered. A blanket claim of confidentiality, without more, will not satisfy this burden. *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995); *Jacksonville*, supra. Finally, even where the employer can prove a legitimate confidentiality concern, it still has a duty to seek an accommodation via bargaining. *Lenox Hill Hospital*, 327 NLRB 1065, 1068 (1999).

*B. Evaluation of the Union’s Requests*³

The Union’s requests involved nonunit data and required a showing of relevance under *Caldwell Mfg. Co.* As will be discussed, however, the Union demonstrated relevance.

1. Requests 1 to 5, and 8⁴

Oncor violated Section 8(a)(5), when it failed to satisfy Requests 1 to 5, and 8. These requests focused on nonunit employees performing storm evaluation work, and sought their names, titles, training, qualifications, wage rates, added compensation, and time spent doing this work. The Union adduced relevance. *First*, it demonstrated that it needed to know their identities and associated personnel data in order to support its unit work grievance. The Union had every right to not accept Oncor’s data at face value, and make its own independent inquiry, which required names and related data. *Second*, the Union showed that it also needed nonunit names and personnel data to evaluate their safety training and connected impact on workplace safety.

Oncor’s confidentiality claim was invalid.⁵ Besides its blanket statement, it failed to show why confidentiality of nonunit names was warranted, given that they worked alongside unit employees and their assignments were known. I, thus, find that

³ These allegations are listed under complaint pars. 9 to 12.

⁴ This request first appeared in the June 5 letter, and was then reiterated in the August 28, 2017 letter.

⁵ Oncor held the burden of proof on this affirmative defense.

⁶ Even if confidentiality was warranted, *which it was not*, the Union’s need for the information for its grievances outweighed Oncor’s de

minimis interest in confidentiality. In sum, Oncor did not win this balancing test.

Oncor failed to show that confidentiality was merited⁶ and violated Section 8(a)(5), when it failed to reply to these requests.

2. Request 6

Oncor violated Section 8(a)(5), when it failed to respond to Request 6, which sought its rationale for diverting unit work. Such guidance could have facilitated bargaining and productive discussions on this key issue and should have been produced without hesitation.

3. Request 7

Oncor violated Section 8(a)(5), when it failed to respond to Request 7, which sought work orders. The Union established that work orders were keenly relevant to its grievances.

Oncor’s contention that producing work orders would cause an undue hardship is invalid. Although it offered to provide work orders once the Union paid \$16,000 in copying and redactions costs, its reply was invalid. Besides a conclusory claim of undue hardship, it wholly failed to prove this point. Its contentions about copying and redaction costs were exaggerated. It is unclear why it needed to redact customer information from work orders, when such data is routinely viewed by unit employees in other work orders and contexts. It was also invalid, as stated, to redact the names of nonunit workers because such information was relevant, nonconfidential, and producible. It is also unclear how Oncor concluded that a pricey \$.11 per page copying cost was valid, given that this estimate seems significantly higher than a commercial copying center rate, and it offered nothing to support this estimate. Moreover, even assuming arguendo that it demonstrated an undue hardship, *which it did not*, it still remained obligated to bargain over cost; its unilateral, pay-in-advance stance, did not fulfill this obligation. *Yeshiva University*, supra, 315 NLRB at 1249; *Somerville Mills*, 308 NLRB 425 (1992). On this basis, it failed to show an undue burden, and violated the Act by withholding work orders.

4. Requests 9 to 11⁷

Oncor violated Section 8(a)(5), when it failed to respond to Requests 9 to 11, which sought the names of nonunit workers receiving training. Such data was relevant to the safety grievance.

5. Requests 12 and 13⁸

Oncor violated Section 8(a)(5), when failed to provide responses to requests 12 and 13, which sought the names of all “new Oncor employees assigned as Damage Evaluators,” and “more experienced employees . . . serv[ing] as Damage Evaluators during previous storms.” These requests, once again, sought information related to the Union’s safety grievance.

CONCLUSIONS OF LAW

1. Oncor is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

minimis interest in confidentiality. In sum, Oncor did not win this balancing test.

⁷ These requests appeared as requests 15 through 17 in the August 28, 2017 letter, but, were listed as requests 9 through 11 the complaint.

⁸ These requests appeared as requests 18 and 19 in the August 28, 2017 letter, but, were listed as requests 12 and 13 in the complaint.

2. The Union is a labor organization within the meaning of Section 2(5).

3. These Oncor employees form a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b):

INCLUDED: All regular employees . . . including Lineman Troublemaker, Journeyman Lineman, Serviceman, Apprentice 6, Apprentice 5, Apprentice 4, Apprentice 3, Apprentice 2, Apprentice 1, Lineman Helper 2 Lineman Helper 1, Service Specialist Sr., Service Specialist, Utility, Mechanic Garage, Field Dispatcher-Distribution, Cable Splicer Sr., Cable Splicer 6, Cable Splicer 5, Cable Splicer 4, Cable Splicer 3, Cable Splicer 2, Cable Splicer 1, Network Helper 2, Network Helper 1, Meter System Specialist Sr., Meter System Specialist 2, Meter System Specialist 1, Storekeeper Sr., Storekeeper, Distribution Specialist Sr., Cable Pulling Sr., Equipment Operator, and Network Specialists Sr.

EXCLUDED: All other employees, office clerical employees, guards and supervisors as defined in the Act.

4. At all times material, the Union has been the exclusive bargaining representative of the latter unit, within the meaning of Section 9(a).

5. Oncor violated Section 8(a)(5), when it failed to supply to the Union relevant information requested in its August 28, 2017 letter.

6. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7).

REMEDY

Oncor is ordered to cease and desist and take certain affirmative action to effectuate the Act. It shall provide to the Union the information sought in its August 28, 2017 letter,⁹ and post the attached notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁰

ORDER

Oncor Electric Delivery, LLC, Dallas, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing to furnish it with information sought in its August 28, 2017 letter, which was relevant and necessary to its role as the unit's exclusive collective-bargaining representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the Act's policies.

⁹ As stated in *Electrical Energy Services*, 288 NLRB 925 fn. 1 (1988), "[t]o the extent that costs and burdens are incurred in the provision of this information, the allocations of such costs can be resolved at the compliance stage."

¹⁰ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

(a) Furnish to the Union, to the extent that it has not already done so, in a timely manner the data requested by it since August 28, 2017.

(b) Within 14 days after service by the Region, post at its Dallas, Texas facility and other facilities where the unit performs work copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 28, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated Washington, D.C. April 4, 2019

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives 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 refuse to bargain collectively with the International Brotherhood of Electrical Workers, Local Union No. 69 (the Union) by failing to furnish it with information requested in its August 28, 2017 letter, which is relevant to its role as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you

Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the data sought by it since August 28, 2017.

ONCOR DELIVERY, LLC

The Administrative Law Judge's decision can be found at www.nlr.gov/case/16-CA-212174 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940

