

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: April 19, 2017

TO: Ronald K. Hooks, Regional Director
Region 19

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Audio Visual Services Group, Inc., d/b/a PSAV 530-6067-6001-0000
Presentation Services 530-6067-6001-3780
Case 19-CA-186007 530-6067-6067-2000
530-6067-6067-2800

The Region requested advice as to whether the Employer violated Section 8(a)(5) by refusing to furnish specific financial information that the Union requested during contract negotiations. We conclude that the Employer was not required to provide the Union with the requested information under *NLRB v. Truitt Manufacturing Company*¹ because the Employer did not claim an “inability to pay” or, if it did, validly retracted its claim. We conclude, however, that the Employer was required to provide the Union with most, but not all, of the requested information under *Caldwell Manufacturing Company*,² so that the Union could meaningfully evaluate and respond to the Employer’s specific economic claims. Finally, although we conclude that the Employer’s refusal to provide the information violated Section 8(a)(5) under current Board law, (b) (5)


³ The Region should therefore issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) under these two legal theories.

¹ 351 U.S. 149 (1956).

² 346 NLRB 1159 (2006).

³ Cases 08-CA-099704, et al., Advice Memorandum dated November 26, 2013.

FACTS

Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services (the “Employer”) employs over 8,200 workers and provides technology services (audio, visual, and lighting) for events held within hotels and conference centers throughout the world. One of the Employer’s forty-nine branches is located in Seattle, Washington. In that area, the International Alliance of Theatrical Stage Employees, Local 15 (the “Union”) represents approximately sixty-five riggers and, as of December 2015, technicians.⁴ On June 24, 2016,⁵ the parties began bargaining for a successor contract for the riggers and a first contract for the technicians.

On August 17 or 18, the Employer asked the Union to explain the basis for its proposed wage increases. The Union stated that its wage proposals were based on wage rates the Employer paid its Union-represented employees in the San Diego and San Francisco areas. The Employer explained its view as to why the Union’s proposal was untenable, i.e., that its business model in Seattle differed from those used in San Diego and San Francisco. Specifically, in the San Diego and San Francisco markets, the employees worked out of hiring halls and could be paid higher rates because the work was tied to specific events; therefore, all of their time was billed to the client. In contrast, the employees in Seattle work set shifts and some of their time could not be billed to clients, but must be absorbed by the Employer.⁶ Amongst its explanation about comparatively distinct business models, the Employer noted that it was losing money in San Francisco because of what the local Union had obtained in bargaining.

The Employer then turned its focus to its relationship with hotels in the Seattle area. It stated that fifty percent of its revenues were paid back to the hotels where it provides its services. The Employer also indicated that it was not the exclusive provider at the hotels; therefore, hotels were free to use other vendors. The Employer concluded by emphasizing that the Union’s “proposal would be suicide for this company,” and it “would put [the Employer] underwater” in the Seattle market

⁴ The Employer initially refused to recognize and bargain with the technicians after the Union won an election in December 2015. Once the Board denied the Employer’s request for review of the certification, however, the Employer agreed to bargain on May 23, 2016.

⁵ All remaining dates are in 2016 unless otherwise indicated.

⁶ The Union believes that the only difference between the Seattle and the California markets is that in California the Employer “overhires”; in that, it maintains a pool of occasional employees.

because “the money is not there to pay the wage rates [the Union proposed] based on the market rates that can be charged for those services.”

On September 2, approximately two weeks later, the Union sent the Employer an email requesting specific financial information based on the Employer’s indication that it would not pay the wages proposed by the Union. The Union requested the following information:

1. Documents sufficient to substantiate [the Employer’s] claim of its inability to pay the requested wages; particularly, we request that the company provide documents that demonstrate the company’s gross revenues, expenses, and profits for 2015 and 2016 to date;
2. [The Employer’s] current contracts with any and all of its hotel clients in Seattle, SeaTac, Bellevue, Tukwila, and Tacoma;
3. If the contracts requested in 2 above don’t expressly establish the commission rates and sums [the Employer] has paid to such property owners between January 1, 2015 and the present, documents that demonstrate that information; and
4. Documents sufficient to show the rates charged to all event clients to whom [the Employer] has provided service in the cities listed above within the past year (September 1, 2015 to present).

Four days later, on September 6, the Employer responded to the Union’s information request via email. It claimed that the Union “grossly mistat[ed] the context in which the statements were made” and provided the following clarification:

What I was explaining during our negotiations is that no employer in this business would pay such a wage to its hourly workforce that was so grossly outside of its business model and if it did so, it would be suicide for the company. This is not an inability to pay for lack of revenue. It’s a refusal to pay an hourly rate that would be detrimental to the business.

In addition to disclaiming its alleged inability to pay, the Employer also addressed what it viewed as the Union’s misconception about the commission the Employer pays hotels. The Employer stated:

[W]e shared with you the issue of commissions not to explain hardship or the ability to pay wages. Rather, we shared this in the context of explaining why we can pay higher union-call rates for billable events vs. the rates being paid to PSAV's regular hourly employees for many hours which are not-billable. There was no connection between these circumstances other than that.

Lastly, the Employer objected that the Union's request sought information that was proprietary and confidential.

On September 12, the parties met for another bargaining session. The Employer presented an economic proposal that reflected both its current pay practices and initial proposals. The Union indicated it was unable to engage in a meaningful discussion because it lacked the financial information necessary to properly evaluate the Employer's proposal. The parties have not bargained since January 2017.

ACTION

The Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to provide the Union with: (1) the information requested in numbers 2-4 under *Caldwell Manufacturing*; and (2) all of the requested information under the General Counsel's new approach to "inability to pay" cases set forth in *Rotek, Incorporated*.

I. The Employer Did Not Assert an Inability to Pay Claim under *Truitt*

Section 8(a)(5) requires employers to bargain in good faith with the representative of its employees. This obligation includes furnishing to unions, upon request, information relevant to the collective-bargaining process.⁷ Although information regarding employer finances is not presumptively relevant, it may become so based upon an employer's bargaining assertions. In *Truitt*, the Supreme Court held that an employer violated Section 8(a)(5) by refusing to provide the union with general financial information needed to substantiate the employer's claim that it could not afford the union's requested wage increase because it would put the employer out of business.⁸ The Court explained:

Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability

⁷ See *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435-37 (1967).

⁸ 351 U.S. at 152-53.

to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy.⁹

The Court “d[id] not hold, however, that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employees are entitled to substantiating evidence.”¹⁰ In fact, “[e]ach case must turn upon its particular facts” and “[t]he inquiry must always be whether . . . under the circumstances of the particular case the statutory obligation to bargain in good faith has been met.”¹¹

Thirty-five years later, in *Nielsen Lithographing Company*,¹² the Board clarified that this duty applies only where an employer asserts a “present inability to pay, or a prospective inability to pay during the life of the contract being negotiated,” not where the employer “is simply saying that it does not want to pay.”¹³ “Thus, inability to pay is inextricably linked to nonsurvival in business.”¹⁴

In determining whether an employer has made an inability to pay claim, the Board considers the employer’s statements “in the context of the particular circumstances in that case.”¹⁵ In doing so, the Board evaluates the substance of the

⁹ *Id.*

¹⁰ *Id.* at 153.

¹¹ *Id.* at 153-54 (paraphrasing *NLRB v. American Nat. Ins. Co.*, 343 U.S. 395, 409-10 (1952) (noting that “a statutory standard such as ‘good faith’ can have meaning only in its application to the particular facts of a particular case”)).

¹² 305 NLRB 697 (1991), *affd. sub nom. Graphic Commc’ns Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992).

¹³ *Id.* at 700. *See also AMF Trucking & Warehousing*, 342 NLRB 1125, 1126 (2004) (“‘Inability to pay’ means that the company presently has insufficient assets to pay or that it would have insufficient assets to pay during the life of the contract that is being negotiated.”).

¹⁴ *AMF Trucking & Warehousing*, 342 NLRB at 1126.

¹⁵ *Stella D’oro Biscuit Co.*, 355 NLRB 769, 770 (2010) (quoting *Lakeland Bus Lines*, 335 NLRB 322, 324 (2001), *enforcement denied* 347 F.3d 955 (D.C. Cir. 2003)),

employer's assertions to determine whether it has "reasonably convey[ed]" that it is unable to pay more than it has offered.¹⁶ In several post-*Nielsen* cases, the Board has found that an employer conveys such a message when it effectively links the concessions it demands to its ability to survive during the course of the collective-bargaining agreement under negotiation.¹⁷

The Board applied these principles in *Shell Company*¹⁸ to find that the employer violated Section 8(a)(5) where it told the union that economic conditions had affected it "very badly, very seriously," that present circumstances were "bad," and that it needed the union's assistance. In portraying its present circumstances, the employer explained that it had lost an important customer and it faced serious regulatory and cost problems.¹⁹ Moreover, in a letter to employees, the employer described its situation as "critical" and as a matter of "survival."²⁰ Although the employer had also discussed its economic disadvantages vis-à-vis competitors, the core of its bargaining position was that it could not economically afford the terms contained in the most

enforcement denied sub nom. SDBC Holdings, Inc. v. NLRB, 711 F.3d 281 (2d Cir. 2013). *See also* *Clemson Bros.*, 290 NLRB 944, 944 (1988); *Continental Winding Co.*, 305 NLRB 122, 125 (1991).

¹⁶ *Lakeland Bus Lines*, 335 NLRB at 324. *See also* *ConAgra, Inc.*, 321 NLRB 944, 944 (1996) ("regardless of the words used, if an employer's claims can be interpreted either as a present inability to pay or a prospective inability to pay during the contract term, it is obligated to provide the union with data supporting its assertions"), *enforcement denied* 117 F.3d 1435 (D.C. Cir. 1997); *Facet Enters.*, 290 NLRB 152, 153 (1988) (although employer claimed competitive disadvantage, "its words and conduct clearly pleaded an inability to pay existing wages and benefits and was therefore legally obligated to turn over books and records so that the [u]nion could verify that poverty claim"), *enfd. in relevant part* 907 F.2d 963 (10th Cir. 1990).

¹⁷ *See, e.g., Stella D'oro*, 355 NLRB at 771-72 (employer "indicated that [its] survival was linked to its obtaining concessions from the [u]nion"); *Stroehmann Bakeries, Inc.*, 318 NLRB 1069, 1079 (1995) (employer indicated that its parent would cease subsidizing employer absent union concessions), *enforcement denied in relevant part* 95 F.3d 218 (2d Cir. 1996).

¹⁸ 313 NLRB 133, 133 (1993).

¹⁹ *See id.*

²⁰ *Id.*

recent contract because it was faced with a present threat to its operation's survival.²¹ In those circumstances, the Board found that the employer had claimed an inability to pay that required it to provide the information requested by the union.²²

In contrast, the Board is unlikely to find a violation of Section 8(a)(5) when an employer's rhetoric suggests it may be unable to pay, but the surrounding context fails to adequately demonstrate a desperate immediacy regarding the employer's financial concerns.²³ For example, in *Richmond Times-Dispatch*, the Board held that the employer did not violate Section 8(a)(5) when it sent a letter to all of its employees informing them that it was "unable to pay a Christmas or Holiday bonus this year" due to a "poor economic climate," and subsequently denied the union's request for financial information.²⁴ In justifying the bonus cancellation, the employer emphasized that it was in "the midst of the worst advertising downturn in a decade," noted the cost-cutting measures it had already taken, and expressed hope that it would be able to continue avoiding layoffs unlike other companies in the industry.²⁵ While the cost-cutting "initiatives ha[d] been helpful in . . . maintain[ing] a strong cash flow," the employer claimed that the bonus was necessary to "offset the projected decline in advertising revenues."²⁶ In affirming the ALJ's conclusion that the

²¹ *See id.*

²² *Id.* at 133-34.

²³ *See, e.g., Coupled Products, LLC*, 359 NLRB 1443, 1445 (2013) (*Noel Canning* Board decision) (finding the employer was merely *unwilling* to pay because the concessions sought were consistent with the local market, the company as a whole was profitable, and the company never insisted the local employer had to "stand on its own"); *AMF Trucking & Warehousing*, 342 NLRB at 1126 (dismissing complaint because employer's statements about the company being a "distress[ed]" asset that the employer was "fighting to keep . . . alive" was not enough to constitute an immediate inability to pay where context did not demonstrate concessions were "a matter of survival"); *Burrus Transfer*, 307 NLRB 226, 228 (1992) (holding that employer's statements—e.g., "he did not 'feel that he could afford'" the union's wage demands or that "he would not be able 'to survive'"—were not enough to constitute an inability to pay when the context demonstrated the employer merely wanted to stay competitive).

²⁴ 345 NLRB 195, 195-98 (2005).

²⁵ *Id.* at 195.

²⁶ *Id.*

employer had not made an inability to pay claim, the Board found that the context of the letter made it apparent the employer's decision was not because of insufficient assets to pay the bonus, but was driven by a desire "to improve its overall performance" during an "industrywide downturn."²⁷ In distinguishing the case from *Shell Company*, the Board concluded that the employer "never even suggested that its existence was at stake, let alone said that the cancellation of the bonus was a 'matter of survival'"; in fact, the Employer ended the letter with a reference to its "very bright future."²⁸

Similarly here, while the Employer's statements on August 17 or 18, i.e., that the Union's "proposal would be suicide for this company" and "would put [the Employer] underwater" in the Seattle market may suggest an inability to pay when viewed in isolation, the surrounding context does not support the gravity of the Employer's words and falls short of triggering *Truitt* and obligating the Employer to open its books.²⁹ Beyond indicating that the Union's wage demands were more than what the market as a whole would support, there is no additional context—e.g., concerns raised about substantial economic loss, deteriorating market share, or a bleak economic future—to indicate that the Employer would be unable to afford the union's proposal now or during the life of the contract being negotiated. Thus, this case is more analogous to *Richmond Times-Dispatch* than *Shell Company* because the Employer's dramatic rejection of the Union's proposed wage increase, viewed in overall context of its statements at the bargaining table, demonstrates a desire to remain competitive rather than a critical decision needed to secure its survival. And, certainly, the

²⁷ *Id.* at 197.

²⁸ *Id.* 197-98

²⁹ See *Stella D'oro*, 355 NLRB at 769-73 (finding employer's rhetoric about being a "bleeding, distressed asset" whose years of unprofitability endangered its survival indicated a potential inability to pay the proposed wages now or over the life of the contract); *Stroehmann Bakeries, Inc.*, 318 NLRB at 1070-71, 1078-81 (same; finding employer's statements about present and projected losses being a "disastrous combination for profitability" within context that employer's survival was dependent on parent company's willingness to use deep pockets to fund losses constituted an inability to pay claim); *Shell Company*, 313 NLRB at 133-34 (finding statements that employer's condition was "critical" and a matter of "survival" constituted an inability to pay in context of employer's statements about its loss of business and important client, regulatory issues, and where employer had already taken steps to address economic threat).

Employer never suggested that the Union's proposal would *immediately or during the course of the next contract* put the Employer out of business.

Moreover, even if the Employer claimed an inability to pay, we conclude that the Employer validly retracted it. The Board has yet to promulgate a formal standard with which to evaluate an employer's retraction of an inability to pay claim.³⁰ Notwithstanding the absence of a formal standard, the Board analyzes several key factors to determine whether an employer's attempted retraction reflects its true position. Thus, an employer's initial inability to pay claim is more likely to reflect the employer's true bargaining position if the claim is unequivocal and carefully considered, rather than an offhand statement made in the heat of bargaining.³¹ Similarly, an employer's attempt to retract the initial claim is more likely demonstrative of the employer's true bargaining position if it is prompt,³²

³⁰ See *Richmond Times-Dispatch*, 345 NLRB at 198 (evaluating an alleged retraction through a piecework framework of past Board decisions in *American Polystyrene Corp.*, *Lakeland Bus Lines*, and *Central Management*, cited below, without a formal standard); *American Polystyrene Corp.*, 341 NLRB 508, 509-10 (2004) (granting employer leeway when it made the inability claim in the heat of negotiations and unequivocally retracted the claim in writing the very next day) *enf. den. sub nom. UFCW Local 1C v. NLRB*, 467 F.3d 742, 753 (9th Cir. 2006) (in context, the employer's conduct at its "essential core" showed that despite the purported retraction, the employer "continued to claim it could not pay for the [u]nion's proposals"); *Lakeland Bus Lines*, 335 NLRB at 326 (finding the employer's statement was merely a denial and not a valid retraction because it failed to acknowledge its alleged inability to pay claim); *Central Management Co.*, 314 NLRB 763, 768-69 (1994) (noting the employer unequivocally retracted its inability to pay claim in writing and the union explicitly acknowledged the employer was no longer pleading poverty).

³¹ Compare *Lakeland Bus Lines*, 335 NLRB at 326 (rejecting the employer's asserted retraction in part where inability to pay claim was made in a letter to the union immediately following the end of negotiations), with *American Polystyrene Corp.*, 341 NLRB at 509-10 (accepting employer's retraction of alleged inability to pay claim where claim was made during the "heat of bargaining" after which the employer explained the very next day that although times were tough, the employer had never said that it could not afford the union's proposals, and that in "uncertain economic times," the employer needed to be "cautious").

³² See, e.g., *Richmond Times-Dispatch*, 345 NLRB at 198 (finding a valid retraction where employer sent clarifying letter before bargaining began over the relevant

unequivocal,³³ based on a credible rationale,³⁴ and precedes the conclusion of negotiations.³⁵

In applying Board precedent to the facts of this case, we find the Employer's retraction valid under current law. In fact, the Employer's actions satisfy each of the criteria the Board has relied upon in the past: its initial alleged inability claim was made in the heat of bargaining; it promptly and unequivocally retracted its claim four days after the Union sought financial information by stating, "This is not an inability to pay for lack of revenue. It's a refusal to pay an hourly rate that would be detrimental to the business"; it provided a legitimate reason for its refusal to pay beyond its wage proposal when it explained that the Union's wage proposal conflicted with both the Employer's business model and commission rates in the Seattle area; and, negotiations continued after the retraction, thus giving the parties an opportunity to reach an accord in the aftermath of the clarification.

In sum, because the Employer did not assert an inability to pay under current Board law and, even if it did, it retracted that claim, (b) (5)

subject); *American Polystyrene Corp.*, 341 NLRB at 509 (acknowledging valid retraction where employer clarified its position the next day).

³³ Compare *American Polystyrene Corp.*, 341 NLRB at 509 (accepting employer's retraction in part where it was unequivocal) with *Lakeland Bus Lines*, 335 NLRB at 324-26 (rejecting employer's alleged retraction where employer denied claiming inability to pay but failed to explain statements).

³⁴ See *Richmond Times-Dispatch*, 345 NLRB at 198 (confirming validity of retraction where the employer denied having made inability to pay claim and clarified that economic conditions precluded the holiday bonus); *American Polystyrene Corp.*, 341 NLRB at 509 (verifying retraction where employer explained that its position stemmed from a cautious approach in tough economic times and not an inability to pay).

³⁵ See *American Polystyrene Corp.*, 341 NLRB at 509 (distinguishing the employer's valid retraction of an inability to pay claim that arose in the "heat of bargaining" the previous day from the failed retraction in *Lakeland Bus Lines* in which the employer made its inability to pay claim and "reflective" written retraction after bargaining had concluded); *Richmond Times-Dispatch*, 345 NLRB at 198 (emphasizing that the "retraction preceded any negotiations about the cancellation of the bonus, thus making clear from the start of the intended bargaining process . . . the true meaning of the Respondent's financial claims in support of the proposed bonus cancellation").



II. The Employer Committed a *Caldwell* Violation Under Current Board Law

Despite determining that the Employer did not have an obligation to provide the Union with the requested information under *Truitt*, we conclude that the Employer violated Section 8(a)(5) under *Caldwell Manufacturing Company*.³⁶ In *Caldwell*, the Board held that when an employer makes specific factual assertions in support of its bargaining positions, information needed to verify those assertions becomes relevant and must be provided upon request.³⁷ As the Board explained, the union needs such information not only to verify the employer's claims but also to respond intelligently to them during bargaining.³⁸ Moreover, the Board's liberal relevancy standard³⁹

³⁶ 346 NLRB at 1159-60.

³⁷ *See id.* (employer's claim that it needed to make facility viable and more competitive required it to provide union with competitor data, labor costs, and other relevant information); *National Extrusion & Mfg. Co.*, 357 NLRB 127, 127 (2011) (acknowledging employer did not assert an inability to pay, but maintaining it "violated the Act by failing to supply the [u]nion with ... requested information relevant to the [employer's] claim of uncompetitiveness"), *enfd. sub nom. KLB Indus., Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012); *see also Coupled Products, LLC*, 359 NLRB at 1445 (finding no merit to the argument that union should still receive some information despite only submitting a failed, broad request under *Truitt* without a more narrowly tailored *Caldwell* request);

³⁸ *See Caldwell Mfg. Co.*, 346 NLRB at 1160 (finding cost, productivity, and competitor data requested by union relevant "because it would have assisted the [union] in assessing the accuracy of the [employer]'s proposals and developing its own counterproposals").

³⁹ *See, e.g., Chapin Hill at Red Bank*, 360 NLRB 116, 120 (2014) (Board's relevance standard "requir[es] only that the information be directly related to the union's function as a bargaining representative and that it appear 'reasonably necessary' for the performance of that function"), *citing Acme Indus. Co.*, 385 U.S. at 437; *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994) (the Board employs "a broad, discovery-type standard"); *E.I. du Pont de Nemours*, 264 NLRB 48, 51 (1982) (once union establishes that requested information "bears a reasonable relation to [its] role as bargaining representative ... the union need not prove actual relevance, but may simply demonstrate a probability that the data is useful for the purpose of bargaining

requires an employer to furnish information that would aid the union in fully understanding and assessing other, more directly relevant information as long as the union demonstrates its potential relevance.⁴⁰

In *A-1 Door & Building Solutions*,⁴¹ for example, the employer justified its bargaining proposals by contending it was not competitive with other companies because it was paying too much in wages and benefits. The union requested information regarding the employer's profit-sharing information—including its net profit for the previous three years—and the employer's job bids, and the employer refused to provide that information.⁴² The Board, citing *Caldwell*, found that the information was relevant because the union had requested specific information tailored to evaluate the accuracy of the employer's claims.⁴³ Similarly, in *National Extrusion & Manufacturing Company*, the employer asserted that the union should accept certain bargaining concessions to improve the facility's competitiveness.⁴⁴ In response, the union requested information about the employer's current and former customers, a calculation of projected savings under the employer's proposals, and market studies.⁴⁵ The Board found the union's request relevant because the

intelligently”) (internal quotation marks, emphasis, and citations omitted), *enfd.* 744 F.2d 536 (6th Cir. 1984).

⁴⁰ See, e.g., *Litton Systems*, 283 NLRB 973, 974-75 (1987) (requiring employer who sought to relocate operation to provide, inter alia, “market share and profit-and-loss information” because this was “additional relevant information with which [the union] could determine the meaning of the information already provided and develop reasonable bargaining proposals”), *enforcement denied* 868 F.2d 854 (6th Cir. 1989); see also *E.I. du Pont de Nemours*, 264 NLRB at 51 (describing union's burden for establishing potential relevance of wage information regarding non-unit employees).

⁴¹ *A-1 Door & Building Solutions*, 356 NLRB 499, 501 (2011).

⁴² See *id.* at 499-502.

⁴³ See *id.* at 500-03.

⁴⁴ 357 NLRB at 127.

⁴⁵ See *id.* at 127-28.

information would allow the union to evaluate the employer's claims and develop appropriate counterproposals.⁴⁶

Here, the Union does not have a right to the broad information sought in its first request, but it does have a right to the specific information it sought in its three remaining requests because that information was made relevant by the Employer's statements. In this regard, the Employer rejected the Union's wage proposal because of: its view that the San Francisco and San Diego wages rates and business model were inapplicable to the Seattle market, that it was losing money in San Francisco at those wage rates, that its relationship with its hotel clients—including the commissions the Employer pays to hotels—made those wage rates unsustainable, and that the market rates charged in Seattle could not support the Union's proposed wages. The Union's first request for "documents that demonstrate the company's gross revenues, expenses, and profits for 2015 and 2016 to date" does not directly correlate to those statements. In response to the Employer's limited comparison between Seattle, San Francisco, and San Diego and its statements about the Seattle market and commission structure, the Union sought gross revenues, expenses, and profits for the entire company—not broken down by geographic market—which would not enable the Union to assess the validity of the Employer's stated concerns. Thus, despite the Board's liberal relevancy standard, the information sought by the Union's first request is not relevant under *Caldwell*.

The Union's remaining three requests, however, which concern the Employer's contracts with hotels in Seattle and the nearby area, hotel commission rates, and rates charged to event clients, are sufficiently specific and narrowly tailored to the Employer's statements about the commissions it pays to its hotel clients and the Seattle market as a whole. Without this information, the Union has no way to assess the veracity of the Employer's statements and determine whether the Employer could sustain the proposed wages in the local Seattle market. Therefore, the Union's second, third, and fourth requests satisfy the Board's "broad, discovery-type standard"⁴⁷ of relevance and the Employer must provide the Union with the information so that it can effectively bargain.

⁴⁶ See *id.* at 128. Cf. *F. A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1312-13 (1995) (employer not required to provide union with copies of customer contracts because information would not aid union in evaluating employer's specific claims regarding competitiveness).

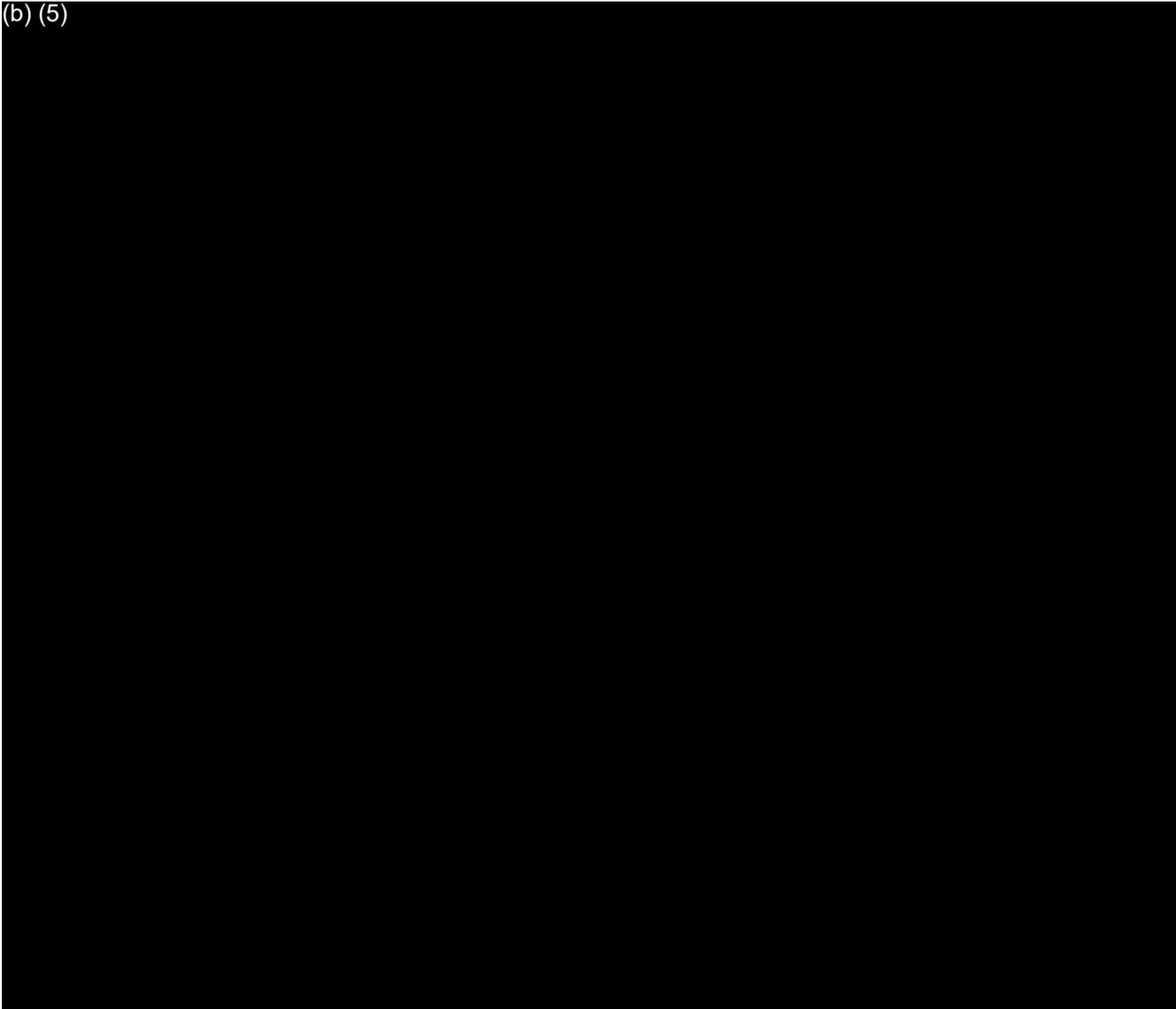
⁴⁷ *Shoppers Food Warehouse*, 315 NLRB at 259.

III. (b) (5) [Redacted]

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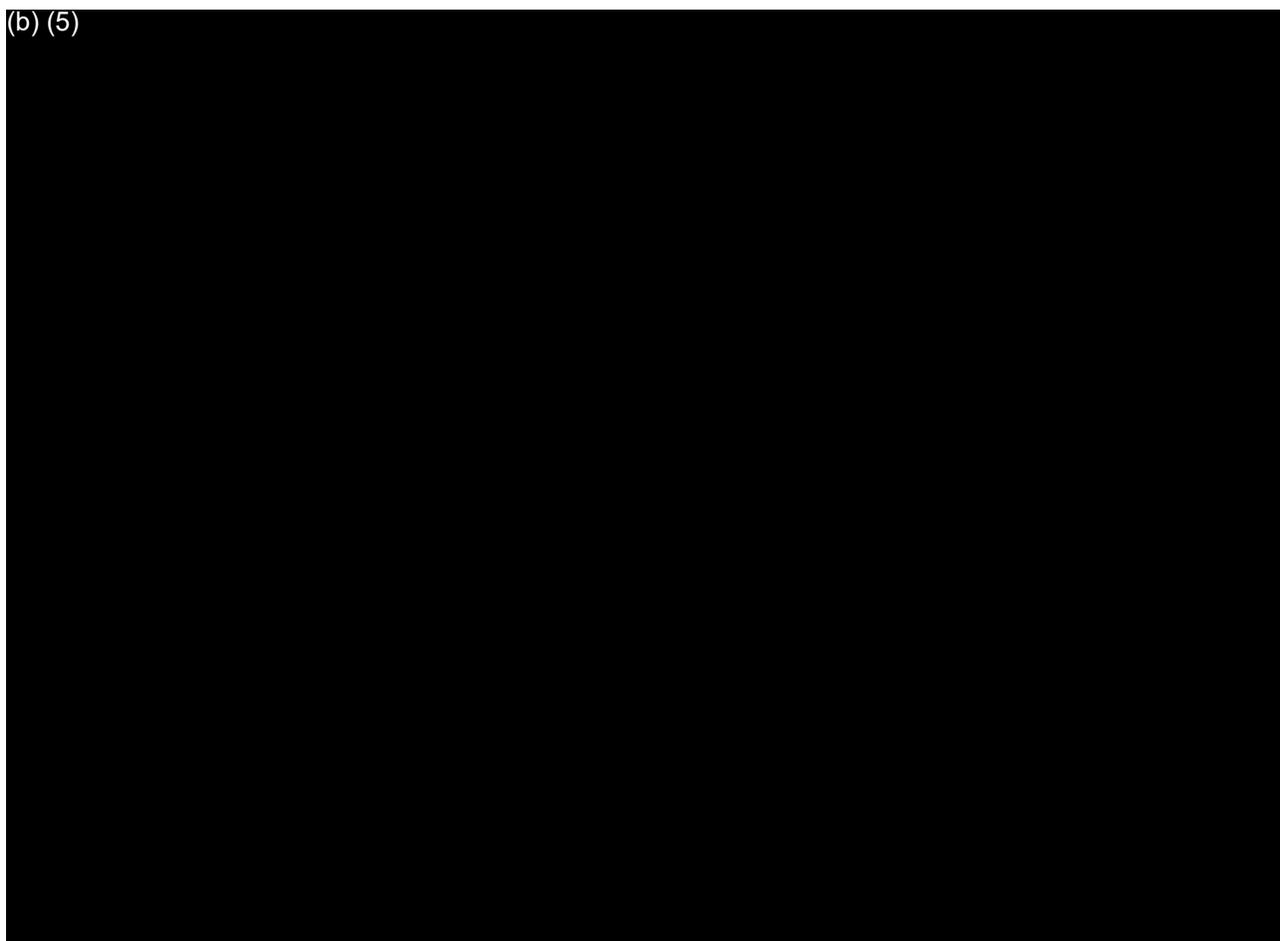
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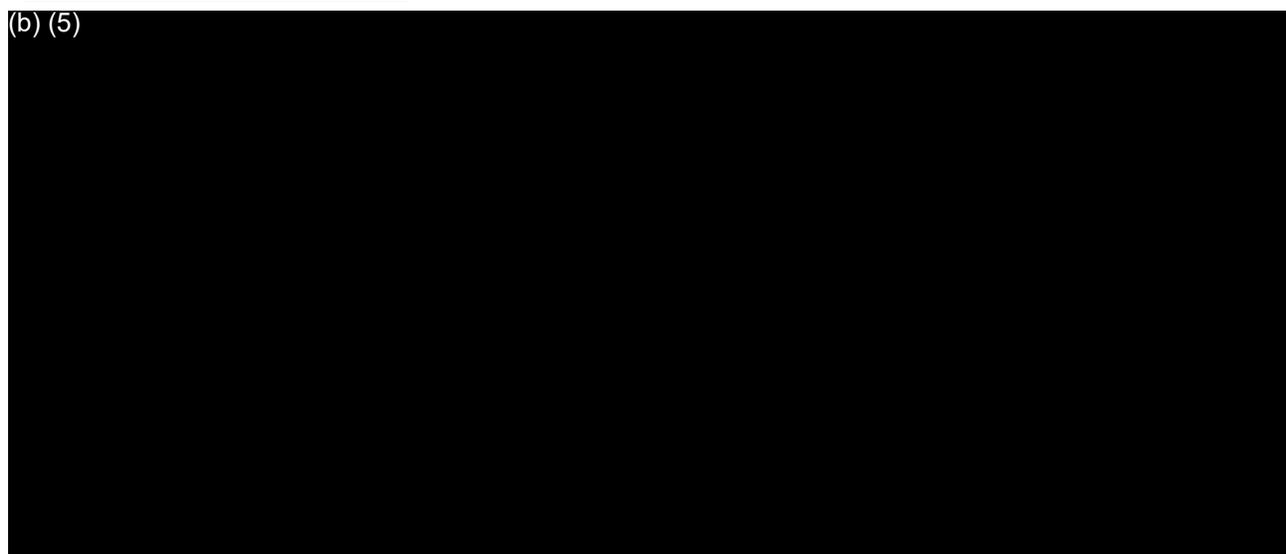
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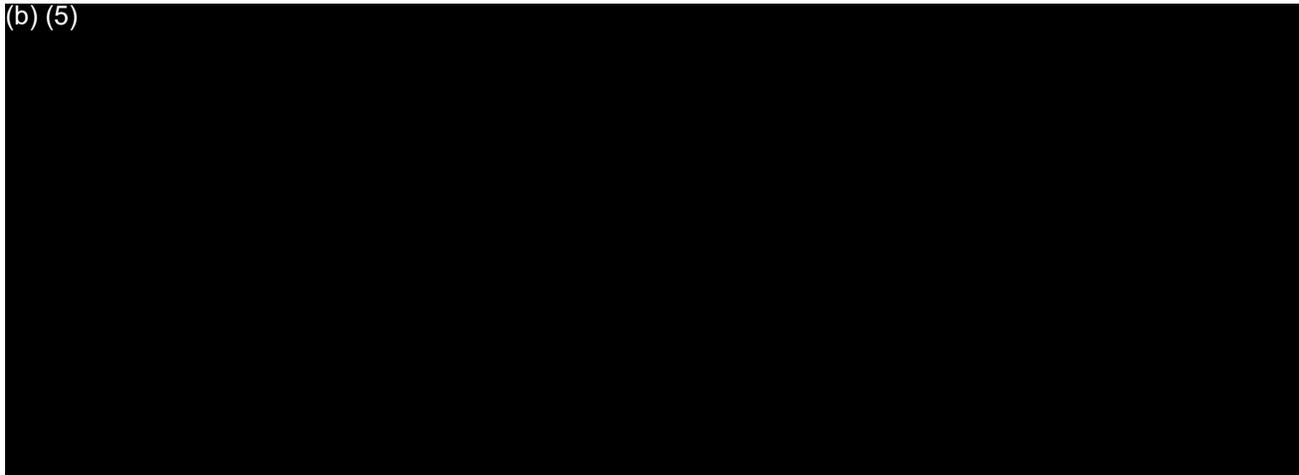
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Accordingly, based on the foregoing, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5), under the two legal theories described above, by refusing to provide the Union with information that is relevant and necessary for bargaining.

/s/
B.J.K.

ADV.19-CA-186007.Response.PSAV. 

(b) (5)

