

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

MURRAY AMERICAN ENERGY, INC. and
THE MONONGALIA COUNTY COAL COMPANY,
A Single Employer

and

Case 06-CA-254520

UNITED MINE WORKERS OF AMERICA,
DISTRICT 31, LOCAL 1702, AFL-CIO, CLC

**BRIEF ON BEHALF OF COUNSEL FOR THE GENERAL COUNSEL
TO ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN**

Submitted by:

David L. Shepley
Counsel for the General Counsel

Dated at Pittsburgh, Pennsylvania,

This 13th day of August 2020

NATIONAL LABOR RELATIONS BOARD
Region Six
1000 Liberty Avenue, Room 904
Pittsburgh, Pennsylvania 15222

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I. PRELIMINARY STATEMENT AND PROCEDURAL HISTORY

Upon a charge duly filed in Case 06-CA-254520 with Region Six of the National Labor Relations Board (“the Board”) by United Mine Workers of America, District 31, Local 1702, AFL-CIO, CLC (“the Union”) against Murray American Energy, Inc. and The Monongalia County Coal Company, a Single Employer (“Murray” or “Respondent”),¹ a Complaint and Notice of Hearing issued on March 25, 2020, against Murray.²

The Complaint alleges that Respondent violated Section 8(a)(5) of the National Labor Relations Act (“the Act”) by unlawfully failing and refusing to provide the Union with certain documents that the Union requested that are necessary for, and relevant to, the Union’s

¹ “Exh. __” designates numbered joint exhibits to the Joint Motion to Submit Stipulated Facts and Joint Exhibits to the Administrative Law Judge in Lieu of Unfair Labor Practice Hearing (hereinafter called the “Joint Motion”). Herein, the numbered paragraph in the Stipulated Facts of the Joint Motion referred to in this brief is designated in brackets in smaller font as SF_. The charge herein is Exh. 1(a).

² Exh. 1(c)

performance of its duties as exclusive collective-bargaining representative for a unit of employees employed by Murray.

In Respondent's Answer to the Complaint,³ it admits service of the charge, commerce and jurisdictional facts and conclusions, single employer status and the supervisory and agency status of various persons named in the Complaint. Respondent denied the alleged violation of the Act in its Answer.

A hearing in this matter was opened telephonically before Administrative Law Judge David I. Goldman ("the ALJ") on June 22, 2020, wherein the formal papers were admitted into evidence. The hearing was then continued to June 30, 2020, to be held by Zoom conferencing at that time.

On June 29, 2020, the parties hereto filed with the Division of Judges the Joint Motion. Subsequently that date the ALJ issued an Order granting the Joint Motion, approving the attendant stipulation of facts, admitting the various joint exhibits and closing and cancelling the hearing. Post-hearing briefs are to be filed no later than August 13, 2020.

II. THE ISSUE

Whether Respondent failed and refused to furnish the Union with a copy of the personnel file and disciplinary records of employee Jeff Reel, which the Union initially requested on October 4, 2019, thereby failing and refusing to bargain collectively and in good faith with the Union as exclusive collective-bargaining representative of Respondent's employees in violation of Sections 8(a)(1) and (5) of the Act.

³Exh. 1(e)

III. **NARRATIVE OF THE FACTS**

A. Description of the parties and their relationship

Murray American Energy, Inc. (“MAEI”) and The Monongalia County Coal Company (“Monongalia”) are a single employer under the Act. [SF4, SF6 and SF7] Monongalia has operated a coal mine in Kuhntown, Pennsylvania (“the mine”).⁴ [SF4 and SF5] James Travelstead (“Travelstead”), Supervisor, Human Resources for Monongalia, and Timothy Baum (“Baum”), Supervisor of Employee Relations for MAEI, are supervisors and agents of Respondent within the meaning of the Act.⁵ [SF18 and SF19, respectively] Cory R. Barack (“Respondent’s Attorney”) was at all material times an agent of Respondent within the meaning of the Act when employed by Respondent.⁶ [SF20]

Certain employees of Monongalia have engaged in the production of coal and related functions at the mine and are represented by the Union.⁷ [SF21] Respondent and the Union have been parties to The National Bituminous Coal Wage Agreement of 2016 (“NBCWA”) and that collective bargaining agreement has been in effect covering the employees represented by the Union at the mine at all relevant times. [SF16 and SF 21(c)] District 31 of the Union has administered NBCWA on behalf of United Mine Workers of America, AFL-CIO, CLC (“UMWA”). [SF11, SF12 and SF17] United Mine Workers of America, Local 1702 (“Local 1702”) is within the jurisdiction of District 31. [SF13]

Michael S. Phillippi (Phillippi”) has held the position of International District Representative for District 31. [SF14] Jeff Reel, the employee of Respondent whose personnel file and disciplinary records are at issue in this matter, is the Vice President of Local 1702. [SF15]

⁴ See Complaint, Exh. 1(c), at paragraphs 2-3. Admitted in Answer.

⁵ See Complaint, Exh. 1(c), at paragraph 6(a). Admitted in Answer. ⁶

See Complaint, Exh. 1(c), at paragraph 6(b). Admitted in Answer. ⁷

See Complaint, Exh. 1(c), at paragraphs 7-9. Admitted in Answer.

B. The Union's requests for documents and Respondent's refusal to provide information

On October 4, 2019,⁸ Phillippi sent an email to Travelstead and Baum wherein he requested “a copy of Jeff Reel’s Personnel file including any and all disciplines he has received.” The email asked that the documents be provided by October 9.⁹ Baum almost immediately replied asking for an explanation of the relevance of the request. A short while later that day, Phillippi answered Baum’s question by stating that the both the Union and Reel needed the documents to verify what was in Reel’s personnel file for the purpose of “past, present or future litigation.” [SF22]

Baum or Travelstead apparently informed Respondent’s attorney Barack of Phillippi’s request because Barack sent Phillippi a letter by email later on October 4 addressing the matter.¹⁰ In that letter Barack stated, “Please have Mr. Reel follow the Company’s policy regarding requests to review personnel files.” [SF23] Phillippi responded to Barack’s letter by sending him an email later that day wherein he asked to be provided with “the company policy regarding requests to review personnel files.” He also reiterated the Union’s original request with the same October 9 deadline.¹¹ [SF24]

Barack responded to Phillippi’s second request on October 4. In his emailed response, he provided the Union with three things: (1) a brief letter; (2) Respondent’s personnel file policy entitled “Access to Employee Personnel Policy”; and (3) a form to be used by employees entitled “Request to View/Copy Personnel File.”¹² [SF25] The “Access To Employee Personnel File Policy” addresses requests for personnel files made by employees. The “Request To View/Copy Personnel File” form asks for the name of a requesting employee and a date and

⁸ All dates herein are for 2019 unless otherwise stated.

⁹ Exh. 4.

¹⁰ Exh. 5.

¹¹ Exh. 6.

¹² Exh.7.

time the employee wants to view his or her personnel file. The employee is required to sign the form. There is no reference whatsoever on the request form of the employee's collective bargaining representative or any involvement in the request by the collective bargaining representative.

In Barack's brief letter to Phillippi, he stated that Reel had to be the party to request his personnel file and that Respondent would not provide the personnel file directly to the Union. Barack did not address that Phillippi had requested Reel's disciplinary records along with the personnel file.

After Respondent did not provide the documents that Phillippi had requested by his October 9 deadline, on October 10, Phillippi sent an email to Barack, copy to Baum.¹³ The email referred to an attached "authorization" from Reel wherein Reel requested that the Union to be given copies of Reel's "employee record". Phillippi requested that the documents be provided by the end of that business day. [SF26]

The "authorization" from Reel, which was attached to Phillippi's October 10 request, is a one-paragraph letter addressed to "whom it may concern" and signed by Reel. In Reel's letter he authorizes the Union's request for a copy of his "personnel file including any and all discipline paperwork." He asked Respondent to provide the copies to the Union rather than to him. Reel stated that he "was not interested in" signing for the copies or paying for them. Lastly, Reel mentioned issues with discipline he had received and he referred to an unspecified management statement about some discipline that would be in his personnel file.

On October 10, UMWA filed a charge in Case 06-CA-279781.¹⁴ [SF27] The charge alleges, in part, the following: "[Respondent] discriminated against Jeff Reel and subjected him to unwarranted and unjustified discipline in retaliation for his protected, concerted activities."¹⁵

¹³ Exh. 8. This exhibit consists of an email from Phillippi along with an "authorization" letter from Reel.

¹⁴ Exh. 9(a).

¹⁵ The filing of this charge is relevant because it reveals that as of early October 2019 the Union was addressing

Not having received the documents that the Union requested twice on October 4 and a second time on October 10, on March 4, 2020, the Union, through Phillippi, submitted a completed “Request To View/Copy Personnel Form”.¹⁶ [SF28] The form listed “Michael Phillippi on behalf of Jeffrey A. Reel” as the party filing the request and the form was signed by Phillippi, but not by Reel.. The stated request was for “any discipline records” in Reel’s personnel file. There is a block on the form for “My personnel file”, but it was not checked. The form noted that there was an attached letter from Reel, who was authorizing the request. The attached letter written by Reel was the exact same letter that had been attached to Phillippi’s October 10 request (see Exhibit 8).

On March 4, 2020, Barack sent Phillippi a letter by email in response to Phillippi’s request.¹⁷ Barack denied the request for Reel’s discipline record. Barack stated that a copy of the discipline file would be made available to Reel “upon receipt of the actual cost of copying it.” Barack stated that Reel had to make any request and it could not come from Phillippi. A blank copy of the request form for use by Reel “on his own behalf” was attached to the email. [SF29]

There have been no other relevant communications between the parties concerning the Union’s requests. [SF30] Respondent has not provided the documents that the Union requested on October 4, October 10 or March 4, 2020. [SF31]

IV. ARGUMENT AND AUTHORITIES

A. Overview of the relevant law

An employer that fails to provide relevant information requested by the bargaining agent of its employees violates Section 8(a)(5) of the Act. Similar to a refusal to bargain, “[t]he refusal

discipline that Reel had received.

¹⁶ Exh. 10. This exhibit consists of a completed “Request to View/Copy Personnel Form” and an undated statement signed by Reel.

¹⁷ Exh. 11. This exhibit consists of the letter from Barack, a copy of the “Access To Employee Personnel File Policy” and a blank “request to View/Copy Personnel File” form.

of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a *per se* violation of the Act", regardless of the employer's good or bad faith in refusing to provide the information. *Brooklyn Union Gas Company*, 220 NLRB 189, 191 (1975); *Proctor & Gamble Manufacturing Co.*, 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979).

The Board has stated that "[a]n employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiation and administration." *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011). Thus, upon request, an employer has the legal duty to furnish its employees' bargaining agent with information relevant and necessary to the performance of its statutory duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435 (1967). The Board and the courts have long held that information concerning wage rates, job descriptions and other information pertaining to employees within the bargaining unit is presumptively relevant.¹⁸ *International Protective Services*, 339 NLRB 701 (2003); *Leland Stanford Junior University*, 307 NLRB 75 (1992); *Curtiss-Wright Corp., Wright Aeronautics Div.*, 145 NLRB 152, 156 (1963), *enfd.* 347 F.2d 61 (3rd Cir. 1965).

Information pertaining to bargaining unit employees would, of course, include an employee's personnel file and disciplinary documents. *Fleming Companies, Inc.*, 332 NLRB 1086 (2000); *Salt River Valley Users Assn.*, 272 NLRB 296 (1984); *Wayne Memorial Hospital Assn.*, 322 NLRB 100 (1996). Also, unit employee disciplinary records are presumptively relevant. The Board has affirmed an administrative judge's decision wherein the judge stated, "the Board has repeatedly held that requesting bargaining unit employee disciplinary records are 'presumptively relevant and must be furnished on request, unless (the) relevance is rebutted'."¹⁹ *Booth Newspapers, Inc.*, 331 NLRB 296, 299 (2000).

¹⁸ The burden to provide presumptively relevant information is on the non-requester, who must rebut the presumption of relevance. *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003).

¹⁹ Citing *Antioch Rock & Ready Mix*, 328 NLRB No. 116, slip op. at 1 (1999)

The Board has stated that when considering an information request, the Board does not pass on the merits of the union's claim regarding relevance. "The Board's only function in such situation is in acting upon the probability that the desired information was relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities." *W-L Molding Co.*, 272 NLRB 1239, 1240 (1984), citing *NLRB v. Rockwell-Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969) and *NLRB v. Acme Industrial Co.*, supra. Accord, *Howard University*, 290 NLRB 1006, 1007 (1988).

The Board does not require that information requests relate to current disputes. Rather, such requests are often made to determine whether a dispute exists and whether that dispute should require the filing of a grievance, exactly the circumstances surrounding the information requests at issue in this case. A labor organization is "entitled to . . . information . . . to judge for [itself] whether to press [its] claims in the contractual grievance procedure or before the Board or courts." *Associated General Contractors of California*, 242 NLRB 891, 894 (1979), enf. as mod., 633 F.2d 766 (9th Cir. 1980). See also, *Westinghouse Electric Corporation*, 239 NLRB 106, 107 (1978), enf. as mod., 648 F.2d 18 (D.C. Cir. 1980); *Leland Stanford*, supra; *Salt River Valley Users Assn.*, supra. Regarding requests by a union for copies of employee personnel files and disciplinary records included therein, the Board has stated that a blanket claim of confidentiality is impermissible. Moreover, the Board has found that employer rules that require the employee to give consent to the release of persona information to his or her collective bargaining representative cannot form the basis for a denial of a union's request for such information if it is relevant. The Board's reasoning with regard to these points is stated as follows:

Regarding the Respondent's position generally that it should be entitled to deny requests for relevant information from personnel records simply because its privacy plan requires an employee consent, we find no support in *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979), on which the Respondent also relies, for any such blanket claim of confidentiality. See *Pfizer, Inc.*, 268 NLRB 916, 919 (1984), enfd. sub nom. *NLRB v.*

Electrical Workers IBEW Local, 309, 763 F.2d 887 (7th Cir. 1985); *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 362 and fn. 36 (D.C. Cir. 1983). Certainly an employer should not be able to “bootstrap” a confidentiality claim as a barrier to disclosure of information to the bargaining representative simply by relying on a plan through which employees, including bargaining unit employees, are promised that a broad range of personal information will remain confidential. Moreover, the mere fact that an employee does not give formal consent—or might even object—to the disclosure of information does not *in itself* constitute grounds for refusing to provide such information when it is relevant to the bargaining representative’s performance of its representational duties.” (emphasis in original) *New Jersey Bell Telephone Co.*, 289 NLRB 318, 319 (1988).²⁰

It is possible for a union to waive its right to certain information, however, the waiver must be clear and unmistakable. *Metropolitan Edison Co. v. NLRB*, 460 NLRB U.S. 693 (1983); *Ground Breakers, Inc.*, 280 NLRB 146 (1986).

B. Application of the law to the facts proves a violation of Section 8(a)(5)

It has long been the height of triteness for a lawyer to assert that a case is “simple”. However, Counsel for the General Counsel cannot resist using that adjective to describe the case before us. This case is indeed exceedingly simple when viewed pursuant to longstanding Board law. It is crystal clear-- a collective bargaining representative has the statutory right to be provided with copies of the personnel file and disciplinary records of an employee that it represents. Three times the Union requested copies of Reel’s personnel file and his disciplinary records. Respondent has failed and refused to provide the Union with those documents. While the legal conclusion in this case should be obvious, Counsel for the General Counsel will nonetheless elaborate below on why that conclusion must apply to the facts in the record. In this regard, certain highly relevant facts will be addressed.

First, it must be crystal clear that Respondent has refused to provide the Union with the information it requested. [SF31] Barack explicitly stated to Phillippi in his second communication

²⁰ See also *Wayne Memorial Hospital Assn.*, *supra*, where the Board, in accord with *New Jersey Bell*, squarely rejected the argument that an employer can refuse to provide to a union an employee’s personnel file simply on the ground that the employee has not granted his or her permission.

on October 4 the following: “Accordingly, Mr. Reel’s personnel files will not be provided directly to you via this letter correspondence.”²¹ Although Respondent advocated a path for Reel to follow—not one for the Union-- to get a copy of his personnel file under its “Access to Employee Personnel File Policy”, that path does not meet its statutory obligation to provide relevant information directly to the Union.

Regarding Respondent’s clear refusal to provide the requested documents, it must be understood that, remarkably, Respondent has not told the Union that it is relying on one of the typical purported justifications presented by employers for such refusal. Respondent is not claiming that the documents are confidential, the request is burdensome, that cost sharing with the Union is appropriate or any other potential justification for a refusal to provide. Rather, Respondent simply informed the Union that it has no right to obtain the documents directly! Telling the Union that Reel, in his status as an individual employee, has a means to obtain the documents by adhering to a rule unilaterally established by Respondent does not meet Respondent’s statutory duty to the Union. Counsel for the General Counsel must assume that Respondent’s rationale for its refusal to provide information is both unique under Board law and nothing short of preposterous.

Second, it must be recognized that there is no issue in this case concerning whether the information requested is relevant to the Union’s duties as the exclusive collective bargaining representative of the unit of which Reel is a member. [SF15 and 21(a)] The absence of any such issue regarding relevance is shown by what was said-- and not said-- in the exchange that occurred on October 4.

Baum asked Phillippi to explain the relevance of the request for a copy of Reel’s personnel file and prior disciplines contained therein. Phillippi responded by clearly stating the relevance as follows: “It [the requested information] is needed to verify the contents of his

²¹ Exh.7.

[Reel's] record. Additionally it is needed to establish what is in his file at this specific time for any past, pending or future litigation where this information is pertinent."²² [SF22] Rather than even questioning the relevance of the Union's request, Barack in his first communication with Phillippi merely pointed to Respondent's policy for such information to be provided to employees.²³ [SF23] There was never any questioning by Barack in that first email, nor in any subsequent communication, of the relevance of the information the Union was requesting. Furthermore, Reel alluded to the relevance of the Union's request in the letter he wrote asking that the Union be provided with the information.²⁴ That letter was twice submitted to Respondent and Respondent never disputed Reel's assertions regarding relevance.²⁵ [SF26 and SF28]

Third, the request for Reel's personnel file and disciplinary records was made by, and strictly on behalf, of the Union at all times. That would include the October 4, October 10 and March 4, 2020, requests submitted to various members of management by Phillippi. While it is true that Phillippi included with his request on October 10 a letter from Reel to "whom it may concern", both the request and the letter clearly state that the documents are to be provided to the Union, not to Reel. With respect to the March 4, 2020, request, it was made by the Union, through Phillippi "on behalf of Jeffrey A. Reel", and signed by Phillippi.²⁶ [SF28] Phillippi resorted to using a "Request to View/Copy Personnel File" form for this request, having already been twice denied the documents when he requested them in the conventional manner. In short, the requests were always made by the Union and never by Reel.

Fourth, the requests made by the Union were for a copy of both Reel's personnel file and his disciplinary records. Obviously the latter is normally included within the former.

²² Exh. 4.

²³ Exh.5.

²⁴ As noted in the fact section, Reel referred to issues with discipline he had received and to an unspecified management statement about some discipline in his personnel file.

²⁵ Exh.8 and Exh.10. It should be noted that stipulated fact #28 contains a typographical error where it refers to "Exh. 11". That should be "Ex.10". Exhibit 10 obviously conforms to the description set forth in stipulated fact #28.

²⁶ Exh. 10.

However, Respondent has not provided even the disciplinary records portion of Reel's personnel file, records which Respondent admits it maintains. [SF31 and SF39, respectively] Thus, even if Respondent should somehow successfully argue that its policy regarding employee access to personnel files prevents the Union from getting direct access to Reel's personnel file, it cannot avoid a finding that it violated the Act by refusing to provide the Union with Reel's disciplinary records.

Fifth, Phillippi stated in conjunction with his initial request on October 4 that the request was being made for "any past, pending and future litigation." This statement alone meets the Board's standard for relevance where there is no existing grievance, as seems to be the case here.²⁷ Furthermore, Reel alluded to a past matter involving frivolous discipline he received and a statement by management involving discipline. Thus, it is clear that issues between Reel and Respondent obviously occurred in the past and were simmering when the Union made its initial request. These issues and potential issues are further revealed through the Union filing a charge in Case 06-CA-249781 on October 10, the very day Phillippi reiterated his request.²⁸ [SF27] In that charge, the Union alleged that Respondent had discriminated against Reel because he had engaged in protected concerted activities.

Sixth, each time, Respondent's response to the Union's requests was unlawful. Barack, on behalf of Respondent, repeatedly stated that Reel would need to submit the form pursuant to Respondent's "Access To Employee Personnel File Policy". This response is totally divorced from addressing an employer's obligation to provide relevant information to an employee's collective bargaining representative. Remarkably—and why we are here-- Barack acted as if Respondent had no obligation under Section 8(a)(5) of the Act.

It is absolutely critical to recognize that the "Access To Employee Personnel File Policy", and

²⁷ See, as noted above, *Associated General Contractors of California*, 242 NLRB 891, 894 (1979), enf. as mod., 633 F.2d 766 (9th Cir. 1980).

²⁸ Exh. 9(a).

the attendant “Request To View/Copy Personnel Form”, make absolutely no mention of a collective bargaining representative or the Union in particular. Therefore, Barack’s response to the Union was to rely upon a policy that it might be able to apply without issue to an individual employee, acting independently of any union representation, who sought access to his or her personnel file. But that policy is wholly different from those situations, as are presented here, where a union requests information in its role as exclusive collective bargaining representative.

Having brought into focus the various matters that are relevant for the ALJ to consider, Counsel for the General Counsel will now point out several matters that are definitely not relevant to that process. First, any specious argument that because Reel requested to see his personnel file over two years ago, in October 2017, using the “Request To View/Copy Personnel Form”, somehow allows Respondent to deny the Union’s requests in October 2019 should be dismissed out of hand. [SF33, SF34, SF35 and SF36] The request in 2017 by Reel was made by him as an employee and not as a representative of the Union. The form makes this clear and nothing in the form Reel filled out states that the Union was involved in any way with the request. It is sheer folly to suggest that an action taken by Reel as an individual employee in 2017 deprived the Union of its statutory rights to the requested documents in October 2019 and March 2020. Thus, the Union never at any time waived its right to receive the requested documents through Reel’s action made two years prior as an individual employee.

A second irrelevant matter that Respondent will no doubt raise is based on the contents of long-expired collective bargaining agreements and ancient arbitration decisions which address completely different facts and circumstances.²⁹ Counsel for the General Counsel is left to speculate that Respondent may attempt to advance some sort of waiver argument based on those documents or that some terms in expired collective bargaining agreements or arbitrator’s decisions somehow eviscerate the rights that the Union currently possesses under the Act. Counsel for the General Counsel is unaware of any case law to support such arguments.

²⁹ Exh. 3.

With respect to any argument for waiver, any waiver by the Union of its right to obtain the documents pertaining to Reel must be clear and unmistakable. Any language in expired collective bargaining agreements and whatever some arbitrator decided in an unrelated matter cannot amount to the Union waiving its right to the documents it requested concerning Reel. Thus, the Union never waived its right to receive these documents.

Third, extracting the cost of providing copies of his or her personnel file from an employee has no bearing on the Union's right to be given the copies free of cost. The "Request to View/Copy Personnel File Form" mentions payment of the cost of copying. This requirement may not cause an issue as applied to an employee in individual status, but this is not the case when it is the Union that is making the request. Case law covering a union sharing the cost of obtaining documents normally involves circumstances where the request is burdensome and/or voluminous.³⁰ Obviously, Reel's personnel file and disciplinary records do not fall into that category. Moreover, Respondent never asked the Union to simply pay some of the cost in exchange for providing the information.

Fourth, it must be clear that a confidentiality exception the United States Supreme Court carved out of the general rule covering relevant information is irrelevant to evaluating Respondent's conduct.³¹ The exception addresses the possibility that some relevant information in employee personnel files may be so confidential a nature that this confidentiality outweighs a union's right to obtain the information, absent permission from the employee for its disclosure. However, in the instant case, Respondent has never claimed that confidentiality was what prevented it from providing what Phillippi had requested. Moreover, the "Access To Employee Personnel File Policy" make no reference to confidentiality concerns and Respondent's summary of its position makes no mention of any confidentiality defense. [SF42] Therefore, Respondent cannot defend against a violation by claiming what the Union requested could be withheld because it was of a confidential nature.

Lastly, Respondent makes a reference in stipulated fact #42 to a "Pennsylvania law". Any

³⁰ *Tower Books*, 273 NLRB 671 (1984); *Pratt & Lambert, Inc.*, 319 NLRB 529 (1995).

³¹ *Detroit Edison Co. v. NLRB*, supra.

such "Pennsylvania law" is not in the record and is, therefore, irrelevant to the decision at hand. Any such law cannot deny the Union its rights under Section 8(a)(5) of the Act.

In summary, Counsel for the General Counsel has shown by examination of every facet of Respondent's refusal to provide the Union with the information it requested that nothing supports Respondent's claim that it acted lawfully. Rather, Respondent clearly violated Section 8(a)(5) of the Act by refusing to fulfill its duty to provide the Union with the information the Union repeatedly requested. Its obligation to provide a copy of the personnel file and disciplinary record of Reel is unmistakable under longstanding Board law. *Salt River Valley Users Assn.*, 272 NLRB 296 (1984).

V. CONCLUSION

The foregoing establishes that Respondent violated Sections 8(a)(1) and (5) of the Act when it failed and refused to provide relevant information to the Union that it requested on October 4, 2019, October 10, 2019, and March 4, 2020. Counsel for the General Counsel respectfully requests that the ALJ issue the appropriate Order set forth below.

VI. PROPOSED REMEDY AND ORDER

Respondent, its officers, agents, successors and assigns, shall:

- 1) Cease and desist from: Refusing to provide the Union with information that is relevant and necessary to its role as your collective bargaining representative.
- 2) Take the following affirmative action: Provide the Union with the information it requested on October 4, 2019, October 10, 2019, and March 4, 2020.

Dated at Pittsburgh, Pennsylvania, this 13th day of August 2020

Respectfully submitted,

/s/ David L. Shepley

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