

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**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.**

**Counsel:**

*David L. Shepley, Esquire (NLRB Region 06)*  
of Pittsburgh, Pennsylvania, for the General Counsel

*Philip K. Kontul, Esq. and Michael D. Glass, Esq. (Ogletree,  
Deakins, Nash, Smoak & Stewart, P.C.),*  
of Pittsburgh, Pennsylvania, for the Respondent

*Laura P. Karr, Esq. and Timothy J. Baker, Esq. (United Mine Workers of America)*  
of Triangle, Virginia, for the Charging Party

**DECISION**

**INTRODUCTION**

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. This case involves an employer's refusal to furnish its employees' union with relevant and requested information, specifically a unit employee's personnel file and disciplinary records. The employer refused to provide the union with the information because the employee in question, while requesting that the information be provided to the union, refused to comply with rules unilaterally established by the employer requiring the employee to personally request, review, and pay for copies of such records before they would be released. The government contends that the employer's refusal to provide the union with the requested information under such circumstances is an obvious violation of the National Labor Relations Act (Act). I agree.

**STATEMENT OF THE CASE**

On January 13, 2020, the United Mine Workers of America, District 31, Local 1702, AFL-CIO, CLC filed an unfair labor practice charge alleging violations of the Act by Murray American Energy, Inc. and Monongalia County Coal Company, as a single employer, docketed by Region 6 of the National Labor Relations Board (Board) as Case 06-CA-254520.

Based on an investigation into this charge, on March 25, 2020, the Board's General Counsel, by the Regional Director for Region 6 of the Board, issued a complaint and notice of hearing in this case for June 22, 2020. On April 8, 2020, Murray American Energy, Inc. and the Monongalia Coal Company filed an answer denying all allegations alleged violations of the Act.

The hearing in this matter opened on June 22, 2020, by telephone, and recessed that day. On June 29, 2020, the parties filed a joint motion submitting stipulated facts for approval, joint exhibits for admission, and seeking to waive further hearing and have this case decided based upon the motion, stipulated facts, and exhibits. That motion was granted June 29, 2020.

Counsel for the General Counsel, the Respondents, and the Union, filed briefs in support of their positions on or before August 13, 2020.

On the entire record, I make the following findings, conclusions of law, and recommendations.

### JURISDICTION

At all material times, Respondent Murray American Energy, Inc. (MAEI) has been a corporation with an office and place of business in St. Clairsville, Ohio, and has been engaged in the mining and non-retail sale of coal through its wholly-owned subsidiary, Respondent Monongalia Coal Company (Monongalia). At all material times, Respondent Monongalia has been a corporation with its headquarters in St. Clairsville, Ohio, and a facility in Kuhntown, Pennsylvania, and has been engaged in the mining and non-retail sale of coal.

At all material times, Respondent MAEI and Respondent Monongalia have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as a single-integrated business enterprise.

These Respondents MAEI and Monongalia constitute a single-integrated enterprise and a single employer within the meaning of the Act. (Collectively, they are referred to herein as Murray American and/or the Employer and/or the Respondent.) Annually, in conducting its business operations, the Respondent sold and shipped from its Kuhntown, Pennsylvania, facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

At all material times, the United Mine Workers of America, District 31, Local 1702, AFL-CIO, CLC (Union) has been a labor organization within the meaning of Section 2(5) of the Act. At all material times, United Mine Workers of America, AFL-CIO, CLC (UMWA) has been a labor organization within the meaning of Section 2(5) of the Act. At all material times, District 31 has been a part of the UMWA, and is sometimes referred to as "United Mine Workers of America, District 31, AFL-CIO, CLC". At all material times, the United Mine Workers of America, Local Union 1702 has been within the UMWA's internally-created jurisdiction for District 31.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

## UNFAIR LABOR PRACTICES

### Background

5           At all material times, Murray American has operated a coal mine in Kuhntown, Pennsylvania. The following employees of Respondent Monongalia constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

10                   All employees employed by Respondent Monongalia County Coal at its facility located in Kuhntown, Pennsylvania who are engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway and rail not owned by Respondent Monongalia), repair and maintenance work normally performed at the mine site or the  
15                   central shop of the employer and the maintenance of gob piles and mine roads, and work of the type customarily related to all of the above.

20           Since about December 5, 2013, Murray American has recognized the Union as the exclusive collective-bargaining representative of this unit of employees. The parties agree that at all times since December 5, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

25           The UMWA and Murray American have been parties to a collective-bargaining agreement known as the National Bituminous Coal Wage Agreement of 2016 (2016 Agreement), effective by its terms from August 15, 2016, to December 31, 2021. At all times, District 31 has administered the 2016 Agreement on behalf of the UMWA. On or about August 15, 2016, Murray American adopted the 2016 Agreement covering the unit.

30           Murray American maintains disciplinary records in bargaining-unit members' personnel files. Pursuant to the 2016 Agreement's multi-step grievance-arbitration procedure, Murray American, as a matter of course, has provided the UMWA with disciplinary records regarding bargaining-unit employees when the Respondent intends to rely upon such records in a pending grievance proceeding. The Union and Murray American have stipulated that based on the language of the grievance-arbitration procedure they have a mutual obligation to disclose to one  
35           another all information each intends to rely upon in connection with a pending grievance.

40           This case concerns the information-disclosure procedure that Murray American imposes when the Union requests employee personnel and disciplinary records that are not necessarily intended to be relied upon in a pending grievance proceeding.

### The Union's Request for Information

45           On or about October 4, 2019, at 9:44 AM, the Union, through the district representative for District 31, Michael Philippi, submitted a request for information through email to Respondent Monongalia, seeking information related to Jeff Reel, a union-represented employee of Murray American and the vice-president of UMW Local 1702.

50           The email was written to Respondent Monongalia's supervisor of human resources, James Travelstead and to the MAEI supervisor of employee relations, Timothy Baum. Phillippi's email stated:

Gentlemen, I am requesting a copy of Jeff Reel's Personnel file including any and all prior discipline he has received. Please provide this by Wednesday October 9, 2019. Thanks.

5 MAEI Supervisor Baum responded a few minutes later stating: "Please explain the relevance of this request." A few minutes later, Phillippi responded to Baum:

10 Tim, this information is requested at the request of Jeff Reel and the UMWA. It is needed to verify the contents of his 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.

15 An attorney, Cory R. Barack, writing on Monongalia letterhead, but whose subsequent emails identified him as an attorney for Murray Energy Corporation, each of which had the same address in St. Clairsville, Ohio, sent an email letter to Union Representative Phillippi, stating:

20 I am in receipt of your request dated October 4, 2019, via electronic mail to Mr. Timothy Baum and Mr. James Travelstead, requesting "a copy of Jeff Reel's Personnel file including any and all prior disciplines he has received."

25 Please have Mr. Reel follow the Company's policy regarding requests to review personnel files. The Mine's Human Resources office can provide details.

Phillippi responded to Attorney Barack that day:

30 Cory, I am requesting the company policy regarding requests to review personnel files. Furthermore, the request has been made for management to provide the union with this information. Failure to do so may again result in the Union being forced to file a Board Charge. As requested previously, please provide this information by Wednesday October 9, 2019.

35 Attorney Barack responded that day:

Dear Mr. Phillippi,

40 In response to your further correspondence to me, dated today, which requests "the company policy regarding requests to review personnel files," a copy of the request form to view/copy personnel files is enclosed, and may be provided to Mr. Reel for completion and submission to Human Resources. The usage of such form represents the Company's authorized procedure for an employee to view his or her files. Accordingly, Mr. Reel's personnel files will not be provided directly to you via this letter  
45 correspondence.

50 Attorney Barack's letter to Phillippi included two documents. One was a document entitled "Access to Employee Personnel File Policy." The second was document entitled "Request to View/Copy Personnel File."

The Access to Employee Personnel File Policy provided by Attorney Barack has been in effect at least since 2017, according to the Respondent's brief (R. Br. at 3). It is reproduced here:

[INSERT COMPANY LETTERHEAD]

**ACCESS TO EMPLOYEE PERSONNEL FILE POLICY**

5

Employee personnel files are maintained in our human resources department and in accordance with state and federal laws. Employees, or their authorized representatives, may request access to their basic personnel file.

10

All requests for access to an employee’s personnel file must be providing [sic] in writing to the human resources department on the Company’s “Request to View/Copy Personnel File” form. Upon receipt of your written request, human resources will schedule an appointment for you to view your personnel file during normal office hours.

15

Employees may also request to make copies of documents contained in the personnel file. The Company may charge the employee the actual cost of copying.

20

Please be advised that Company policy may be subject to state requirements not referenced in this Policy. Please check with a human resources representative for more information.

25

The other document included in Attorney Barack’s letter, the “Request to view/copy personnel file,” which was on Respondent Monongalia’s letterhead, is reproduced here:

**REQUEST TO VIEW/COPY PERSONNEL FILE**

30

Employee Name: \_\_\_\_\_

Date of Request: \_\_\_\_\_

35

Work Telephone or Extension: \_\_\_\_\_

Job Title: \_\_\_\_\_

40

1. I, \_\_\_\_\_, request an appointment with the HR department to review my personnel file. The last date I reviewed my file was \_\_\_\_\_.

45

Employee’s Signature: \_\_\_\_\_ Date: \_\_\_\_\_

2. (\*Completed by HR\*)

50

Request Received by: \_\_\_\_\_ Date: \_\_\_\_\_

Appointment Scheduled for:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

File review completed by: \_\_\_\_\_ Date: \_\_\_\_\_

5

3. Employee comments regarding the accuracy of information in this file:

10

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

20

HR Representative's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

4. I, \_\_\_\_\_, request a copy of

25

( ) My personnel file

( ) Documents in my personnel file listed below:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

35

I understand that I may be charged the actual cost of copying any copies from my personnel file I request.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

40

File copy completed by: \_\_\_\_\_ Date: \_\_\_\_\_

**[END OF DOCUMENT]**

45

On October 10, 2019, Phillippi emailed Attorney Barack, with a copy to Baum, stating,

50

Gentlemen, attached is authorization from Jeff Reel for the Union to obtain a copy of his employee record. Please provide this by the end of business today. Thanks.

The attached authorization stated:

To whom it may concern,

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15

I am confirming the request by my representative, Michael Phillippi, to receive a copy of my personnel file including any and all discipline paperwork. We are making this request so the UMWA has a current copy for their records. Being that management has frivolously disciplined me and made at least one statement alleging discipline that would be in my file, this request is being made in writing as opposed to going to the Human Resources office. Additionally, as you know, I work at the mine while the UMWA District office is in Fairmont, WV and the International office is in Triangle, VA. Since this information needs to go to the Union, it is far more practical for you to email it directly to Mr. Phillippi. I am not interested in signing for a copy of my record, nor being charged for a copy of my record. Please provide the information that has been requested by my District representative.

20

Thank you,  
Jeff Reel

25

Although it had not received the information requested from Murray American, on October 11, 2019, the Union filed an unfair labor practice charge against Murray American alleging that the Employer had discriminated and retaliated against Reel for protected and concerted activities under the Act and his previous participation in Board processes. That charge was dismissed by the Regional Director on March 27, 2020.

30

On or about March 4, 2020, Reel resubmitted his note, set out above, requesting that the Union be provided with his personnel file and all disciplinary paperwork. That day, Phillippi submitted a request to the Employer for Reel's discipline records on the "Request to View/Copy Personnel File" form, and referenced "the attached letter from Jeff Reel authorizing this request." That same day, March 4, 2020, the Employer's attorney, Barack, responded to Phillippi, with a letter stating:

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40

I am in receipt of your information request dated March 4, 2020, requesting, "a copy of the discipline record for Jeff Reel," including the request form executed by you, and note from Mr. Reel. Mr. Reel may complete and submit a new form to Human Resources on his own behalf. For convenience, a blank copy of the form is enclosed.

45

The usage of such form represents the Company's authorized procedure for an employee to view his or her files. Further, a copy of Mr. Reel's discipline file will be made available to him upon receipt of the actual cost of copying it, as set forth in the form. Accordingly, Mr. Reel's discipline record will not be provided directly to you via this letter correspondence.

50

Subsequent to Attorney Barack's letter, there have been no relevant communications between the parties concerning the Union's request for information. Murray American has not provided the Union (or Reel) with the requested information.

Other than this request for Reel’s personnel file by Phillippi, Murray American has received one other employee request for a personnel file since the Access to Employee Personnel File Policy went into effect. That request was from Reel, on October 23, 2017. This 2017 request made no reference to the Union, or to Reel’s affiliation with the Union. It did not state that it was a request from the Union and there is no record evidence of the Union involving itself in that request. In that instance, Reel complied with the policy, and filled out the Access Policy Request Form. Murray American charged \$7.20 (10 cents a page) for copying and supplying the personnel documents. That amount was deducted from Reel’s subsequent paycheck. This is the only personnel file that Murray American has provided to an employee since the Access to Employee Personnel File policy went into effect. There have been no previous Union requests for personnel files to which the Access to Employee Personnel File Policy has been applied.

### Analysis

The General Counsel alleges that Murray American’s failure and refusal to provide the Union the requested information regarding unit employee Reel’s personnel and disciplinary records violates Section 8(a)(5) of the Act.

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of its employees.” 29 U.S.C. § 158(a)(5).

An employer’s duty to bargain collectively and in good-faith encompasses the duty to furnish on request information relevant to and necessary for its employees’ exclusive representative to perform its representational functions. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 151–153 (1956). The duty to provide requested relevant information “unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.” *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967). The employer’s obligation includes the duty to supply information necessary to administer and police an existing collective-bargaining agreement. *Id.*, at 435-438. There is no requirement that the requested information relate to a pending grievance. *Grand Rapids Press*, 331 NLRB 296, 299 (2000).

As explained in a previous case involving this Respondent, *Murray American Energy, Inc.*, 366 NLRB No. 80, slip op. at 30 (2018), enfd. 765 Fed. Appx. 443 (D.C. Cir. 2019), a union’s right to information is a broad right and one central to the proper functioning of the bargaining process and the Act:

The Union is not limited to requesting information for specifically named or even specifically-contemplated grievances, or requests for specifically referenced incidents. The Union’s right to knowledge-based representation and bargaining is not a stingily-dispensed right, but rather, a right central to the Act, and part of the promise of union representation. It is a right intended to support the bargaining process: “The objective of the disclosure [of information] obligation is to enable the parties to perform their statutory function responsibly and ‘to promote an intelligent resolution of issues at an early stage and without industrial strife.’” *Clemson Bros.*, 290 NLRB 944, 944 fn. 5 (1988) (quoting *Monarch Tool Co.*, 227 NLRB 1265, 1268 (1977)).

Like a flat refusal to bargain, “[t]he refusal 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” without regard to the employer’s subjective good or bad faith. *Brooklyn Union Gas*

Co., 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.* 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979).

5 Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed “so intrinsic to the core of the employer-employee relationship” to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). A bargaining unit employee’s personnel file and records of discipline fall squarely within the ambit of the type of information presumptively relevant to the bargaining representative’s representational duties. *Grand Rapids Press*, 331 NLRB 296, 299–10 300 (2000) (collecting cases and noting the Board has required employers to provide unions with personnel files of employees, copies of disciplines, and printouts showing disciplines issued to other employees).

15 Moreover, and specific to the Employer’s actions here, the conditioning of the furnishing of unit information to a union on receipt of an employee consent is inconsistent with the Act. *New Jersey Bell Telephone Co.*, 289 NLRB 318, 319 (1988) (“the mere fact that an employee does not give formal consent—or might even object to the disclosure 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”) (Board’s emphasis). Even more inconsistent with the 20 Act, then, is the Respondent’s refusal here to furnish information to the union based on the failure of an employee to follow an employer rule requiring the employee to sign particular employer forms and personally appear before the employer in order to review and receive the documents.<sup>1</sup>

25 In accordance with the foregoing precedent, the employer’s statutory obligation to provide the Union with the requested information concerning unit employee Reel’s personnel file and discipline record is straightforward.

30 In defense, the employer does not dispute the relevancy of the Union’s request and specifically disavows “confidentiality or similar concerns.” (R. Br. at 9 fn. 3). Instead, Murray American contends that it is permitted—by longstanding contractual language and arbitrations decisions interpreting it—“to adopt reasonable work rules,” including its rule on employee access to personnel files (R. Br. at 12). It then relies on employee Reel’s noncompliance with this rule as a bar to furnishing the Union with requested information. To this, the Respondent adds the 35 contention that the Union has “acquiesced to the enactment of the Policy” (R. Br. at 8) as the policy has been in effect for three years without any prior disputes over it. (R. Br. at 13.)

40 The Respondent’s defense is meritless. Even assuming, *arguendo*, a contractual right to adopt reasonable work rules, the relevant question is not whether the Employer has a contractual right to adopt personnel file access rules for employees, but rather, whether there is a contractual or other basis for applying such rules to compromise or condition the Union’s statutory right under Section 8(a)(5) to receive requested relevant information.

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<sup>1</sup>Similarly, case law suggests that an employer showing of burdensomeness is a prerequisite to attempting to charge a union for the furnishing of basic information, and even then the employer must offer to bargain about costs. *Tower Books*, 273 NLRB 671, 671 fn. 5 (1984), *enfd.* 772 F.2d 913 (9th Cir. 1985). See *Oncor Electric Delivery*, 369 NLRB No. 40 (2020) (“If there are substantial costs involved in compiling information, the parties must bargain in good faith over who shall bear such costs”). However, this issue need not be reached, as the Employer’s practice here is not to charge the Union—but, instead, to absolutely refuse to provide the information to the Union, subject to the employee paying and otherwise following procedures dictated by the employer for receipt of information. I note, however, that there is no claim or evidence that the furnishing of Reel’s file would pose a burden for the Respondent.

In *MV Transportation, Inc.*, 368 NLRB No. 66 (2019) the Board adopted the contract coverage standard to analyze contractual defenses to refusal to bargain allegations. Under this standard (*MV Transportation*, supra at slip op. 2):

5 the Board will examine the plain language of the collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally. . . .  
10 . In other words, the Board will honor the parties' agreement, and in each case, it will be governed by the plain terms of the agreement.

15 In this case, the collective-bargaining agreement (even when read in light of the arbitration decisions interpreting it proffered by the Respondent in its brief) is devoid of contractual language covering or even speaking to the purported right to limit the Union's statutory right to information.

20 Indeed, the Respondent does not even argue the point. Instead, it leaps without rational segue from its purported contractual right to adopt its personnel file access policy for employees, to a purported right to limit the Union's statutory right to information. While the Respondent's purported right to unilaterally make employee rules is itself problematic—the Respondent cites only to contractual language granting that “management of the mine, the direction of the working force and the right to hire and discharge are vested exclusively in the Employer”—it is also utterly beside the point. Whatever rules the 2016 Agreement empowers the Respondent to make for employees, nothing in the agreement in any manner covers or even speaks to a right by the Respondent to limit the Union's statutory access to information.<sup>2</sup>

25 In addition, the Respondent contends that its case is bolstered by the fact that it has maintained this policy since 2017, and there has been no prior dispute. According to the Respondent, this suggests acquiescence by the Union to the Respondent's abridgement of the Union's statutory right to information.

30 This argument is unavailing. While the Board has held that “[a] clear and unmistakable waiver may be inferred from past practice” (*California Pacific Medical Center*, 337 NLRB 910, 914 (2002)), here, the Respondent offers not a single instance in which the Union acquiesced to allowing the Respondent's policy to limit the Union's statutory right to information. Indeed, the only time the policy has been enforced against *an employee* seeking documents was in 2017, when Reel requested his own personnel documents and complied with the policy. But there is no

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<sup>2</sup>1 note that while, as a general matter, the contract coverage standard is more deferential to employer unilateral action than the Board's pre-*MV Transportation* “clear and unmistakable” standard, nevertheless, the *MV Transportation* contract coverage test is not standardless. In order to avoid a duty to bargain an employer must do more than recite incantations about contract coverage. While the contract need not specifically address the employer decision at issue, the employer must be able to point to plain language in the contract that reasonably may be understood to cover the action on which the employer seeks to avoid bargaining. See e.g., *ABF Freight System, Inc.*, 369 NLRB No. 107, slip op. at 3 (2020) (applying contract coverage standard and finding that “we cannot say that [camera] installations came within the compass or scope of any contract language that granted the Respondent the right to install the cameras” and, therefore, finding violation of duty to bargain); *Dupont Specialty Products, USA, LLC*, 369 NLRB No. 117, slip op. 16–17 (2020) (applying contract coverage standard and finding that contracting out was not within compass or scope of contractual language granting rights to employer and, therefore, finding violation of duty to bargain). In this case, there is no contract language covering the right to limit or condition the Union's statutory right to information.

evidence at all that Reel was acting for the Union when he requested his own documents or that the Union acquiesced to allow the Respondent's policy towards employee access to personnel files to compromise its own statutory right to information. The Union did not seek information in that instance, as far as the record shows. Other than requests related to pending grievances, there was no Union request for information in 2017.<sup>3</sup>

As set forth in *MV Transportation*, supra, slip op. at 12:

if the contract coverage standard is not met, the Board will continue to apply its traditional waiver analysis to determine whether some combination of contractual language, bargaining history, and past practice establishes that the union waived its right to bargain regarding a challenged unilateral change.

Thus, the Board's traditional "clear and unmistakable" waiver standard remains applicable where the contract coverage defense fails. Under that standard, a waiver of statutory bargaining rights is not lightly inferred and must be "clear and unmistakable." See *Metropolitan Edison v. NLRB*, 460 U.S. 693, 708 (1983); *Provena St. Joseph Medical Center*, 350 NLRB 808 (2007). Here, neither the contract, nor any history of acquiescence—there is none—nor any other evidence, establishes a waiver by the Union of its statutory right to request and receive relevant information from the Respondent.<sup>4</sup>

Accordingly, I find a violation of Section 8(a)(5) and (1) of the Act as alleged.<sup>5</sup>

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<sup>3</sup>As noted, the parties stipulate that requests for information directly related to grievances are outside the ambit of the employer's policy denying the Union requested and relevant information.

<sup>4</sup>The Respondent suggests (R. Br. at 11) that its position has a "sound arguable basis" in the contract, and therefore, should be deferred to by the Board. However, the "sound arguable basis" defense is not applicable in these circumstances, where the General Counsel is not alleging a failure of the Respondent to abide by a collective-bargaining agreement in violation of Sec. 8(d) of the Act. *ADT Security Services*, 369 NLRB No. 31, slip op. at 2-4 (2020); *Bath Iron Works Corp.*, 345 NLRB 499, 502 (2005), enfd. 475 F.3d 14 (1st Cir. 2007). Here, the General Counsel's allegations do not involve a contractual premise and the sound arguable basis defense is inapposite. In any event, there is not a colorable construction of the contract that supports Respondent's claim that the Union's right to information has been contractually compromised. Accordingly, the "sound arguable basis" defense would fail if it were applicable, which it is not. *ADT*, supra at slip op. 4 (to meet "sound arguable basis standard" standard employer's interpretation must be "colorable").

<sup>5</sup>An employer's violation of Sec. 8(a)(5) of the Act is also a derivative violation of Sec. 8(a)(1) of the Act. *Bemis Co., Inc.*, 370 NLRB No. 7, slip op. at 1 fn. 3 (2020). The General Counsel does not contend that the employer has committed an independent violation of Sec. 8(a)(1) of the Act. Accordingly, I do not reach the Respondent's argument on brief that its maintenance of the Personnel File Policy does not violate Sec. 8(a)(1) of the Act.

### CONCLUSIONS OF LAW

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1. The Respondents Murray American Energy, Inc. and the Monongalia County Coal Company (collectively, the Respondent) constitute a single-integrated business enterprise and are a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party United Mine Workers of America, District 31, Local 1702, AFL-CIO, CLC (Union) is a labor organization within the meaning of Section 2(5) of the Act.

10

3. Since about December 5, 2013, the Union has been the exclusive collective-bargaining representative of the following appropriate unit of the Respondent's employees:

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All employees employed by Respondent Monongalia County Coal at its facility located in Kuhntown, Pennsylvania who are engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway and rail not owned by Respondent Monongalia), repair and maintenance work normally performed at the mine site or the central shop of the employer and the maintenance of gob piles and mine roads, and work of the type customarily related to all of the above.

20

4. Since about October 4, 2019, the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union by failing and refusing to furnish the Union with the information it requested concerning unit employee Jeff Reel's personnel file including any and all prior discipline he has received.
5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

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30

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

35

The Respondent, having unlawfully refused to collectively bargain with the Union by failing and refusing to furnish the Union with requested information, shall provide the Union with unit employee Jeff Reel's personnel file including any and all prior discipline he has received.

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The Respondent shall further be ordered to refrain from in any like or related manner abridging any of the rights guaranteed to employees by Section 7 of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. The notice shall comply with the modification to the standard notice-posting requirements set forth in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020). This notice shall be posted in the Respondent's facility or wherever the notices to employees are

regularly posted for 60 days without anything covering it up or defacing its contents.<sup>6</sup> 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. 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 October 4, 2019. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 6 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>7</sup>

### ORDER

The Respondent, Murray American Energy, Inc., and the Monongalia County Coal, Company, St. Clairsville, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to collectively bargain with the Union by failing and refusing to furnish it with requested information that is relevant 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) Furnish to the Union in a timely manner the information requested by the Union on October 4, 2019, concerning unit employee Jeff Reel's personnel file including any and all prior discipline he has received.

(b) Post at its facilities in St. Clairsville, Ohio, and Kuhntown, Pennsylvania, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided

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<sup>6</sup>The Respondent shall be ordered to post a common notice at the Monongalia mine in Kuhntown, Pennsylvania, and at its St. Clairsville, Ohio corporate headquarters, as there is evidence that corporate officials were involved in the commission of the information-request violation at issue here. *Murray American Energy, Inc.*, 366 NLRB No. 80, slip op. at 1-2 fn. 4 (2018).

<sup>7</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>8</sup>If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial

by the Regional Director for Region 6, 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 October 4, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 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.

Dated, Washington, D.C. September 29, 2020



David I. Goldman  
U.S. Administrative Law Judge

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complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

## 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 collectively bargain with the United Mine Workers of America, District 31, Local 1702, AFL-CIO, CLC (Union) by failing and refusing to furnish it with requested information that is relevant to the Union's performance of its functions as your collective-bargaining representative.

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 by the Union on October 4, 2019.

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

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov)  
William S. Moorhead Federal Building, Room 904, Pittsburgh, PA 15222-4111

(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

Administrative Law Judge's decision can be found at [www.nlr.gov/case/06-CA-254520](http://www.nlr.gov/case/06-CA-254520) 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.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF  
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER  
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS  
PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE  
OFFICER (412) 690-7117.