DONNA N. DAWSON, Administrative Law Judge. This case was tried using Zoom for Government technology on September 28, 2021. The International Association of Sheet Metal, Air, Rail & Transportation Workers (SMART), Sheet Metal Workers Local 19 (Charging Party/the Union/SMW Union Local 19) filed the charge against General Aire Systems, Inc. (Respondent) on June 28, 2021, and the General Counsel issued the complaint July 30, 2021.

The complaint alleges that Respondent has failed and refused to provide the Union with relevant and necessary documentation pertaining to Respondent’s assignment of certain work covered by collective-bargaining agreement between Respondent and the Union. Respondent claims that the requested information is not relevant or necessary because the referenced work is not covered by the agreement. After a review of all the evidence, I find Respondent has failed and refused to furnish the Union with the relevant and necessary requested information in violation of Section 8(a)(5) and (1) of the Act.

1 All dates are in 2021 unless otherwise indicated.
On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all the parties, I make the following:

**FINDINGS OF FACT**

**I. JURISDICTION**

General Aire Systems, Inc. is a corporation with an office and place of business in Darby, Pennsylvania (the facility) and is engaged in the distribution and servicing of specialty air handling equipment and air filtration systems. During the 12 months prior to the hearing, Respondent purchased and received at its facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. Collective Bargaining Agreements Between the Parties**

Respondent is an employer member of both the Sheet Metal Contractors’ Association of Philadelphia and Vicinity (SMCA Phila) and the Sheet Metal Contractors’ Association of Central Pennsylvania (SMCA-Central PA). Both the SMCA Phila and SMCA-Central PA act in the capacity of multiemployer bargaining agents and are referred to as “employer” in their respective collective-bargaining agreements with the Union.

On May 1, 2019, Respondent executed an agreement whereby it agreed to be bound by the collective-bargaining agreement between SMCA-Phila and the Union effective from May 1, 2019, to April 30, 2022. On June 1, 2019, Respondent executed an agreement whereby it agreed to be bound by the collective-bargaining agreement between SMCA-Central PA and the Union effective from June 1, 2019, to May 31, 2022.

2 Abbreviations used in this decision are as follows: “Tr.” for the Transcript, “Jt. Exh.” for joint exhibits, “GC Exh.” for the General Counsel’s exhibits, “GC Brief” for General Counsel’s posthearing brief, “R. Exh.” for Respondent’s exhibits, and “R. Brief” for Respondent’s posthearing brief. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision, but rather are based upon my consideration of the entire record. The only exhibits offered and admitted into the record are GC Exhs. 1, 4–8, 10–13 and R. Exh. 1.

3 Respondent made these admissions during the hearing. (Tr. 9–10, 16–17)

4 “[T]he territory covered by this Agreement [SMCA Phila] includes, in their entirety, the following counties: Philadelphia, Bucks, Montgomery, Chester and Delaware Counties in Pennsylvania and Camden, Gloucester and Salem Counties in New Jersey.” (GC Exh. 13, p. 40)

5 “[T]he territory covered by this Agreement [SMCA-Central PA] includes, in their entirety, the following counties: Adams, Bedford, Blair, Berks Centre, Cumberland, Dauphin, Fulton, Franklin, Huntingdon, Juniata, Lancaster, Lebanon, Lehigh, Mifflin, Northampton, Perry, and York Counties in Pennsylvania and Warren County in New Jersey.” (GC Exh. 13, p. 6)
As noted, Respondent distributes and services specialty air handling equipment and air filtration systems. In doing so, Respondent performs air filter service, grease hood cleaning and heating, ventilation and air conditioning (HVAC) duct cleaning. George Rossi (Rossi) co-founded the company in 1990 and headed construction sales until 2014 when he became Respondent’s president. (Tr. 105) The following employees of Respondent (the Philadelphia Unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

The employees covered by Article 1 (Scope of Work) of the Agreement between the Sheet Metal Contractors’ Association of Philadelphia and Vicinity (SMCA Phila) and the Union which is effective by its terms from May 1, 2019 through April 30, 2022.

The following employees of Respondent (the Central Pennsylvania Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The employees covered by Article 1 (Scope of Work) of the Agreement between the Sheet Metal Contractors’ Association of Central Pennsylvania (SMCA-Central PA) and the Union which is effective by its terms from June 1, 2019 through May 31, 2022.

By entering into these agreements described above, Respondent recognized the Union as the exclusive collective-bargaining representative of the Units without regard to whether the Union’s majority status had ever been established under Section 9(a) of the Act. Since May 1, 2019, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the Philadelphia Unit. Likewise, at all times since June 1, 2019, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the Central Pennsylvania Unit. It is undisputed that these agreements are nearly identical for purposes of this decision. As such, they will be referenced herein as the “CBA” or “agreement.”

B. Union Grievance and Subsequent Request for Information on June 9, 2021

Gary Masino (Masino) has been the Union’s president and business manager since 2011. (Tr. 19) In 2020, Masino saw Respondent’s newspaper advertisement for entry level HVAC laborers in the Philadelphia area. He testified that he was “[surprised] that [Respondent would] be hiring and not calling [the Union]” to perform the kind of work at issue in the Union’s grievance. (Tr. 40) To investigate, the Union essentially “salted” Respondent by having two of its members – Wayne Horton and Matt Millard – apply for the jobs as unrepresented employees. (Tr. 41, 90) Once hired, they worked for Respondent as nonunion, non-journeymen laborers for

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5 Air filter service involves removing dirty air filters from air conditioning units and replacing them with clean ones. Grease hood cleaning consists of removing and pressure cleaning dirty grease hoods and their filters such as those found in fast food restaurants over cooking equipment and reinstalling them. HVAC duct cleaning includes gaining access into ductwork within a building’s air and heating systems, vacuuming under a large negative air pressure to remove dust and debris and then installing sheet metal doors or patches “to reinstall the integrity of the duct system” to prevent leakage. (Tr. 105–106)
a couple of months and reported that they had been regularly performing duct cleaning and filter changing as well as some grease hood cleaning. Consequently, it is undisputed that Respondent never paid them the Union’s scale rate, deducted for union benefits and dues or reported their hours to the Union. As a result of this discovery, on October 14, 2020, the Union’s business manager/agent, Howard Van Buren (Van Buren), filed a grievance against Respondent. The grievance charged that the “[e]mployer failed to employ journeyman or registered apprentice sheet metal workers to perform bargaining unit work and attempted to evade its contractual responsibilities under the CBA, and further deliberately refused to assign work because of union support.” The Union referenced Article II, Sections 1, 5, 12 and Article IV, Section 1 of the CBA, and stated under “Project, Site or Shop involved,” “All locations.” (Tr. 88–95; GC Exh. 7)

On June 9, the Union, through Van Buren, requested that Respondent furnish it with the following information:

- All documentation of General Aire’s assignment of employees to perform filter changes, grease hood cleaning, and/or duct cleaning for the three-year period preceding the filing of the grievance through the present. This request includes but is not limited to written employee assignments, work orders, and customer receipts.

Van Buren explained that the Union needed this information “to process the grievance filed against you on 10/14/20.” He also advised that the Union was “prepared to discuss ensuring the confidentiality of any customer or trade secret information and will provide necessary assurances that the use of these materials will be appropriately limited to the prosecution of the grievance and the enforcement of the parties’ collective bargaining agreement.” (GC Exh. 4) Both Masino and Van Buren testified that the Union needed the requested information to calculate damages, in other words, the number of hours worked by nonunion employees while performing the disputed covered work. Masino further testified that once the Union received the information, it would present it to the Union’s Joint Adjustment Board so it could determine whether the grievance had merit and the extent of the damages if any. At the time of hearing, the grievance was pending receipt of the requested information and arbitration. (Tr. 44–45, 79, 94–95)

On June 28, Respondent through its counsel, Ivan D. Smith, responded to the Union’s information request. Respondent maintained that the assignment of work identified in the Union’s request—filter changes, grease hood cleaning, and/or duct cleaning—was not covered by the applicable CBA “which is a construction labor agreement.” Smith asserted that, “[t]he work in question is facility maintenance services and not covered by the CBA. Because this is not covered work, there is no need or reason for General Aire to provide the requested documentation.” (GC Exh. 5) In addition, Smith warned that Respondent’s recent hiring of “two laborers (a “B” rate installer and a “B” rate 4th period apprentice) from Local 19’s hiring hall to perform air filter service and grease hood cleaning work should not be construed as a waiver by General Aire that constitutes covered work.” He insisted that,

General Aire retained these laborers for facility maintenance services and not construction related work, as a gesture of good faith and with the understanding that General Aire and Local 19 were close to reaching agreement that would include General
Aire’s use of Local 19 laborers for the air filter service and grease hood cleaning work for facility maintenance services in existing buildings. Unless General Aire and Local 19 are able to reach an agreement concerning this issue, these workers will be the last individuals pulled from the union hall for this work. General Aire will retain the installer and the apprentice, provided their work is satisfactory, for the duration of the current work backlog.

(GC Exh. 5) On July 21, Smith provided Respondent’s supplemental response to the Union’s request for information and continued to maintain that the work performed consisted of “facility maintenance services in existing buildings” which was not covered by their CBA. He added, for the first time, that Respondent’s “assignment of employees to perform the service work in question is not easily isolated or retrieved. As such, please be advised that General Aire does not maintain the information in the format requested for the period of time identified in your information request.” (GC Exh. 6)

In Respondent’s July 14 position statement to the General Counsel, Smith insisted that CBA covered work pertained only to that performed on new building construction or building renovation and not filter changes, grease hood cleaning, and/or duct cleaning to be performed in existing structures. Interestingly, Respondent claimed that the Union was not entitled to the requested information because it “[was] not relevant to the threshold issue presented by the grievance – whether the identified air filter service and grease hood cleaning work is covered under the applicable [CBA].” Smith further contended that, “the parties never intended to treat air filter service and grease hood cleaning work in existing buildings as covered work under the applicable collective bargaining agreement.” He stated that, rather,

When General Aire first signed a collective bargaining agreement with Local 19, the parties acknowledged that General Aire had already contracted with a different labor union – Teamsters Local 312 – for air filter service and grease hood cleaning work in existing buildings, and therefore agreed that this work was excluded from the Local 19 contract. For the next fifteen-plus years, General Aire maintained contracts with both Local 19 and Teamsters Local 312…Accordingly, from the time it first entered a [CBA] with Local 19, General Aire has never used Local 19 for either air filter service or grease hood cleaning work in existing buildings. Instead, General Aire utilized laborers from Teamsters Local 312 for this facility maintenance work. When General Aire’s relationship with Teamsters Local 312 ended on December 31, 2015, the company resorted to using non-union employees for the air filter service and grease hood cleaning work in existing buildings.

(GC Exh. 8) Rossi confirmed that Respondent last employed Local 312 teamsters to perform any kind of work at the end of 2015 when their contract ended. Therefore, I find Local 312 teamster involvement in this case of little if any relevance. (Tr. 146–147)
Other documents admitted into the record include various communications between Respondent’s president Rossi and Union President Masino (ranging from November 20, 2020, to August 12, 2021). (GC Exhs. 10, 11, 12) They mostly include letters or emails from Rossi showing how Respondent had been experimenting or researching with data to see if it could go forward with extending a contract with the Union for work it believed was not covered in the governing CBA—other words, work performed in existing buildings—and Masino ultimately insisting that Rossi provide the information requested on June 9, 2021. On November 20, 2020, Rossi thanked Masino for preliminary discussions about “[carving] out agreement to see if there is some possible way to increase our labor use of Local 19 members” and provided a labor rate “inclusive of employer paid taxes and insurances, etc.” (GC Exh. 10) On April 8, 2021, Rossi provided Masino with a proposed agreement explaining that, “[t]he basis of the discussions is continued uses of union labor in existing buildings for grease hood cleaning and filter service when not in conjunction with a Building Trades Agreement. The intent is to utilize Local 19 Maintenance Specialist and Trainees moving forward.” The Union did not sign off on this agreement. (GC Exh. 11)

On July 30, 2021, Rossi referenced how “we have a couple months of experimenting with Local 19 fulfilling our existing building filter service and kitchen hood labor needs, unrelated to duct cleaning.” He further wrote that, “[y]ou should recall that I indicated we would consider utilizing local 19 labor for our existing building services, unrelated to duct cleaning, moving forward if a reduced labor burden rate would allow us to be competitive and maintain our profit margins. Even in the wake of the newest grievance and NLRB complaints I’m still willing to share the numbers.” On August 4, Masino responded that,

I’m glad that you’re in a sharing mood, but the information that I am concerned with is what we have formally requested and you have a statutory obligation to produce: ‘all documentation of your assignment of employees to perform filter changes, grease hood cleaning, and/or duct cleaning for the three-year period preceding the filing of the grievance through the present’…General Aire is bound to a collective bargaining agreement that requires the assignment of Local 19 members to perform these jobs. Your ‘experimenting’ with having a supervisor wasting time shadowing two well-trained guys still makes no sense to me…I’m always willing to meet if I think [it’s] going to get something done, but you seem to want to talk about anything but the actual problem.

(GC Exh. 12, pp. 1–3, 4–5) On August 10, for the first time, Rossi asserted that “[t]he annual audits by the Union already provide the labor details the Union is entitled to. Our position has not changed. The agreement I signed is a construction labor agreement and does not apply to labor positions engaged in facility service work not related to construction or renovation work, and not requiring skilled journeymen.” (GC Exh. 12, p. 741) (Id.)

Masino replied on August 12, that the CBA “is plain on its face” and “[y]ou have a contractual obligation to assign the work under the CBA, and a statutory obligation to produce the information we’ve asked for.”

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6 It appears that Rossi resent this same email to Masino on August 11. (GC Exh. 12, p. 743).
Therefore, these communications reflect that the Union and Respondent continued to disagree on the contract coverage issue grieved by the Union and made the subject of the information request.

C. Rossi’s Testimony

Rossi testified that “[h]istorically, we have relied on Local 19 to perform the HVAC duct cleaning for construction projects or renovation projects under a construction trades agreement.” (Tr. 106–107) Rossi stated that Horton and Millard, “salted” by the Union, only performed grease hood cleaning and air filter service work in existing facilities and not in new construction. (Tr. 125) Rossi asserted that Respondent had already provided the Union with information regarding Local 19 only covered work through its weekly obligation to complete information on the Union’s portal for “any projects over $5,000.” He testified that in doing this, Respondent had recorded hours worked “and then that creates an equivalent of a report which we use as an invoice to remit our funds and the employee funds to the hall the following week.” Rossi also claimed that the Union audited his company annually during which “[c]opies of payroll information, the daily service reports, copies of the checks we’ve sent to the Union” are provided. However, he admitted that recent audits were conducted remotely without the Union having direct access to Respondent’s files. According to Rossi, for the annual audits, the company creates a separate copy of Local 19 projects under the CBA and retains them in a different file from those of non-Local 19 work. (Tr. 127–128, 131–132, 137) On cross-examination, however, Rossi admitted that the information regularly submitted for Local 19 projects referred to “submission of hours for benefit [fund] contributions” and would not tell the Union what type of work had been performed. (Tr. 140) Therefore, Respondent has not provided the Union with any documentation regarding work conducted by non-Local 19 members.

Rossi further insisted that the information sought by the Union would have been too overwhelming or burdensome to access and provide. He testified that to access any information on what it considered to be nonunion covered work (in existing facilities), Respondent would have to manually review “about 4500 invoice files” for all work performed in just 1 year, for example from January 1 through December 31, 2020. He testified that in a 3-year period that would involve about 13,500 individual files with about 40 pages per file. He explained that they would need to look at each of those files manually “[b]ecause we have no way to distinguish what is a filter service, from a grease hood, from a fan order, from a commission that we received, for all our different types of business. There’s no easy way to distinguish it electronically.” Rossi concluded that only about 5 percent of Respondent’s total files would contain information responsive to the Union’s request for information. (Tr. 129–130, 131–132) However, when asked how he came up with the 5 percent, Rossi ultimately acknowledged he had no real basis for doing so in that, “[i]f you’re asking me if we crunched some numbers or anything like that, we weren’t able, you know, we’re not able to do that because we’d have to look through everything to make that determination, but I’m confident that it’s a minimal amount of our documentation.” (Tr. 141–143) Nevertheless, Rossi admitted that Respondent had no

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7 The applicable, current CBAs are set forth in GC Exh. 13, with the Central Pennsylvania Area CBA beginning at p. 1 and the Philadelphia Area CBA beginning at p. 38. As previously noted, these agreements are referenced herein as the existing “CBA” (between the Union and Respondent).
intention of providing what the Union actually requested and the number of files involved would not have made a difference.  (Tr. 135–136, 138, 142–143, 148–149)\textsuperscript{8}

The evidence reveals, however, that in its first (June 28) response to the Union’s information request, Respondent did not inform the Union that it believed the request to be overly burdensome or rather too broad or indicate that it would have difficulty complying with the request. In its second response on July 21, Respondent stated that, “the information concerning General Aire’s assignment of employees to perform the service work in question is not easily isolated or retrieved. As such, please be advised that General Aire does not maintain the information in the format requested for the period of time identified in your information request.” However, Respondent never sought clarification or additional time to retrieve the information or any other accommodation from the Union. Rather, it simply refused to provide the information. Moreover, it was not until 2 months later on August 10 that Rossi claimed that Respondent had already provided information in the form of the annual audit.  (Tr. 138–139; GC Exhs. 5, 6)

\textbf{D. Additional Allegation}

The Union initially argued that the scope of its information request extended to work performed outside of the Philadelphia and Central Pennsylvania areas (in other words, on Respondent’s projects in other parts of the country) that should have been performed by Local 19 members.\textsuperscript{9} In support of this theory, Masino testified that the contract provided or required that under certain circumstances, Respondent may or must utilize two or more Local 19 members on any project in the country. Respondent disagreed that it was bound to send Local 19 workers to perform work throughout the country. Nevertheless, during the hearing, the Union modified its request to seek information pertaining to jobs performed only in Pennsylvania, New Jersey and Delaware.  (Tr. 36, 83–86)

\textbf{E. Credibility Determinations}

This case involves few if any credibility determinations. There is no doubt that the parties hold to their own interpretations of what constitutes covered work under the CBA. As described above, Respondent believes that covered work includes that performed only on new and renovation projects while the Union believes it includes that performed on all types of construction—new, existing and renovations. This dispute goes to the very heart of the Union’s

\textsuperscript{8} I did not permit Rossi to respond as to whether Respondent’s position statement included anything about the Union’s information request being overbroad or burdensome. Respondent’s counsel argued in turn that the General Counsel knew they had discussed this subsequent to the position statement and challenged him to take the stand. Respondent’s counsel continued to argue that Respondent was never unwilling to provide information. However, Respondent’s decision not to furnish the requested information led to the hearing in this case and any subsequent discussions in connection with the charge investigation, the complaint or settlement are not relevant. I ended the argument between counsel and determined that the position statement had already been admitted into the record and that it spoke for itself.  (Tr. 150–152)

\textsuperscript{9} In other words, work the Union believed to be covered by the CBA—assignments to perform filter changes, grease hood cleaning, and/or duct cleaning. The grievance also set the scope to “[a]ll locations.”  (GC Exh. 7)
pending and underlying grievance against Respondent. Therefore, as articulated throughout the hearing, it is unnecessary for me to interpret the contract or decide whether the disputed types of work are covered by the CBAs in order to decide the only issue before me—whether Respondent violated the Act by failing to furnish the Union with the requested information.

In support of its position, Respondent contended that based on the discussions between Respondent and union representatives in 2020 and 2021 and the fact that through 2015, another union, Teamsters Local 312, had been performing work in existing buildings, the Union was well aware that the CBA did not cover work in existing buildings. However, I find that a review of the evidence, including the current CBA between Respondent and Union Local 19, supports a factual finding that the parties’ dispute involves contract coverage interpretation at the center of the underlying grievance and pending arbitration. Therefore, this dispute is not before to resolve the complaint allegation or as a credibility issue.

Regarding Rossi’s testimony that Respondent provided the Union with requested relevant information, I find that whatever it provided involved information sent to the Union benefit fund and not to the Union and that it was not responsive to the Union’s information request. It did not include any information regarding work performed by non-Local 19 members. Rather, it included only information about work that Respondent believed to be covered by the contract and not that requested by the Union.

III. DISCUSSION AND ANALYSIS

A. Legal Standards Regarding Requests for Information

An employer’s duty to bargain includes a general duty to provide information requested by the union that “is potentially relevant and would be of use to the union in fulfilling its responsibilities as the employees’ bargaining representative.” 10 NLRA v. Truitt, Mfg. Co., 351 U.S. 149 (1956); E.I. DuPont de Nemours and Co., 366 NLRB No. 178, slip op. at 4 (2018), citing NLRA v. Acme Industrial Co., 385 U.S. 432, 435–436, 438 (1967); United Parcel Service of America, 362 NLRB 160, 161–162 (2015); Postal Service, 332 NLRB 635, 635 (2000). Generally, information relating to wages, hours, and terms and conditions of employment of unit employees is presumptively relevant and must be furnished to the union upon request unless the employer provides a legitimate reason for not doing so. CVS Albany, LLC, 364 NLRB No. 122, slip op. at 2 (2016); Matthews Readymix, Inc., 324 NLRB 1005, 1009 (1997), enf. denied on other grounds 165 F.3d 74 (D.C. Cir. 1999); Southern California Gas Co., 344 NLRB 231, 235 (2005); Curtis-Wright Corp., 145 NLRB 152 (1963), enf. 347 F.2d 61 (3d Cir. 1965). Further, information involving any stage of arbitration is relevant and should be provided as the goal is to also encourage resolution of disputes short of arbitration hearings. Pennsylvania Power Co., 301 NLRB 1104, 1105 (1991); Beth Abraham Health Services, 332 NLRB 1234, 1234 (2000) (“an employer is obligated to provide information which is relevant to a union’s decision to file or process grievances). Thus, the employer must furnish documentation relating to the union representative’s core responsibilities of processing grievances and arbitrations, enforcing compliance of existing

10 Sec. 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).
CBAs and representing employees in the disciplinary process.

When requested information involves employees outside of the bargaining unit, it is the union’s burden to demonstrate relevance. United States Testing, 324 NLRB 854, 859 (1997), enfd. 160 F.3d 14 (D.C. Cir. 1998); Reiss Viking, 312 NLRB 622, 625 (1993) Shoppers Food Warehouse, 315 NLRB 258, 259 (1994). This burden is “not exceptionally heavy,” as “the Board uses a “liberal, discovery-type standard” in determining relevancy, with the sought-after information not having to be dispositive of the issue between the parties. NLRB v. Acme Industrial Co., 385 U.S. at 437; G4S Secure Solutions (USA), Inc., 369 NLRB No. 7, slip op. at 2 (2020); DirectSat USA, LLC, 366 NLRB No. 40, slip op. 1, fn. 2 (2018); Public Service Co. of New Mexico, 360 NLRB 573, 574 (2014). Rather, it must have some bearing upon the matter, be of probable or potential use to the union in carrying out its statutory responsibilities and be more than a mere suspicion. Postal Service, 332 NLRB 635, 636 (2000); Shoppers Food Warehouse, Corp., 315 NLRB 258, 259 (1994); Bacardi Corp., 296 NLRB 1220 (1989). In other words, a union must have “a reasonable belief supported by objective evidence that the requested information is relevant, unless the relevance of the information should have been apparent to the Respondent under the circumstances.” Public Service Co. of New Mexico, above at 574. See also Disneyland Park, 350 NLRB 1256, 1258 (2007); Shoppers Food Warehouse, above at 259. However, the Board does not assess the merits of the underlying grievance or dispute between the parties to determine relevance. Indeed, “[t]he Board does not pass on the merits of the union’s claim that the employer breached the collective-bargaining agreement…and the information that triggered the union’s request may be based on hearsay and need not be accurate or ultimately reliable.” E.I. DuPont De Nemours & Co., above, slip op. at 5, citing Shoppers Food Warehouse, above at 259–260 and Reiss Viking, above at 625; See also Postal Services, 332 NLRB 635, above at 636.

B. Respondent Failed to Provide the Information Requested in Violation of Section 8(a)(5) and (1) of the Act

1. The Union sufficiently established relevance

In this case, the requested information potentially involves work performed by nonunion members. Therefore, the Union bears the burden of demonstrating relevance. I find that it has done so. In its information request dated June 9, the Union requested documentation of Respondent’s assignment of filter change, grease hood cleaning and/or duct cleaning for the preceding 3-year period. This included but was not limited to “written employee assignments, work orders, and customer receipts.” (GC Exh. 4) The Union clearly communicated its need for the information— “to process the grievance filed” on October 14, 2020, which is pending arbitration. The Union further included its openness to “discuss ensuring the confidentiality of any customer or trade secret information” and to “provide necessary assurances that the use of these materials will be appropriately limited to the prosecution of the grievance and the enforcement of the parties’ collective bargaining agreement.” (Id.) In its October 14, 2020 grievance, the Union claimed that Respondent failed to hire “journeyman or registered apprentice sheet metal workers to perform bargaining unit work and attempted to evade its contractual responsibilities under the CBA.” (GC Exh. 7) The Union’s request went to the core responsibilities of union representation—defending employees through the grievance and arbitration processes and enforcing an existing contract. See A.S. Abell Co., above at 1112–1113. Further, the Union had objective evidence on which to base its request in that Respondent
sought out nonunion employees to perform work that the Union believed to be covered by the CBA.

There is no dispute that the Union’s grievance is pending arbitration. The substantive issue in the underlying grievance is contract coverage and whether the contract between the Union and Respondent covers work performed in only new or renovation building projects or in existing buildings and as such whether Respondent has violated the contract by employing nonunion members to perform covered work. As previously stated, the Board does not pass on the merits of a Union’s claim that an employer breached a contract. E.I. Du Pont de Nemours & Co., 366 NLRB 178 above slip op. at 5. Where requested information relates to pending grievances and existing contract provisions, it is “information that is demonstrably necessary” to the union “if it is to perform its duty to enforce the agreement.” A.S. Abell Co., above.

2. Respondent’s defenses are not valid

“Absent presentation of a valid defense, an employer has an obligation to furnish relevant information.” Beth Abraham Health Services, above at 1235, citing Woodland Clinic, 331 NLRB 735, 736 (2000). I find that Respondent has failed to establish valid defenses. For reasons already stated, I dismiss Respondent’s argument that I must rule on the contract coverage issue before deciding whether it failed to provide the requested information in violation of the Act. Respondent in its correspondence with the Union admitted that such a dispute existed and Respondent even explored extending contract coverage to include work on existing buildings. The Union rejected this attempt, reminding Respondent that the disputed work was already covered by the contract, and reiterated its need for the requested information. The scope of work section (Article I) of the CBA appears to encompass a wide variety of work including the types discussed in this decision, the information request and the grievance. However, the parties could not point out a specific section that specifically spoke to whether the work involved all types of construction versus only work in new and renovated buildings. Moreover, there is no dispute that the contract between Respondent and Teamsters Local 312 ended in 2015. (Tr. 72, 146; R. Exh. 1) Thus, the Union held a reasonable belief that the contract had been violated based on objective evidence from its Unit that Respondent had hired outside the Union to perform work covered by the CBA. See Racetrack Food Services, 353 NLRB 687 (2008). This belief did not have to be dispositive, accurate, or even, ultimately reliable and could be based on hearsay. See In re CEC, Inc., 337 NLRB 516, 518 (2002); Union Builders, Inc., 316 NLRB 406, 409 (1995). Nor did the Union need to be entirely sure of the degree to which the contract had been violated or show in advance exactly how the information sought would be useful or reliable. See Blue Diamond Co. 295 NLRB 1007 (1989).

Respondent’s argument that it has already provided the Union with relevant information also fails. The evidence reveals that the documentation that Respondent referenced was not what the Union requested regarding work assigned by Respondent to all employees. Rather, it included information about union members that Respondent is required to submit in connection with the Union’s benefit fund and annual audit.11 Moreover, Rossi admitted that this information

11 Respondent has not disputed that the Benefit Fund is a separate entity than the Union. Nevertheless, that information articulated by Rossi did not include documentation about work performed by non-Local 19 members.
included what it believed the Union was entitled to and not what the Union had requested. The Board has determined that it is the Union and not the employer who should decide what information can be of use to it. See *FirstEnergy Generation, LLC.*, 362 NLRB 630, 636 (2015). In the same vein, a union is entitled to verify an employer’s assertions or representations regarding relevance and the information sought. See *Finch, Pruyn & Co.*, 349 NLRB 270, 275–277 (2007), enf’d. 296 Fed. Appx. 83 (D.C. Cir. 2008).

In support of its argument that the requested information was overburdensome, Rossi testified that Respondent would have to manually review 5,400 individual files with about 40 pages each. He also essentially conceded that there would have been no need to perform a search because information pertaining to Local 19 would have constituted only 5 percent of its total files. I agree with the General Counsel that this explanation was “largely conjecture” and insufficient to excuse Respondent’s burden of production of relevant and necessary information. (GC Br., p. 13) As previously stated, Rossi ultimately acknowledged that he had no real basis for his testimony and that, “[i]f you’re asking me if we crunched some numbers or anything like that, we weren’t able, you know, we’re not able to do that because we’d have to look through everything to make that determination, but I’m confident that it’s a minimal amount of our documentation.” (Tr. 43) “[T]he burden in time and money necessary to fulfill a request for information is not a basis for refusing the request…the parties must bargain in good faith as to who shall bear such costs.” *Pratt & Lambert, Inc.*, 319 NLRB 529, 534 (1995); *Superior Protection Inc.*, 341 NLRB 267, 269 (2004), enf’d. 401 F.3d 282 (5th Cir. 2005); *Mission Foods*, 345 NLRB 788, 789 (2005). Further, allocations of such costs can be resolved during the compliance state of the proceedings. See *Electrical Energy Services*, 288 NLRB 925 fn. 1 (1988).

In this case, Respondent did not sufficiently specify in its responses to the Union any such burden of cost and time to access requested information nor did it offer to negotiate or request an accommodation. In fact, Respondent did not even make this argument in its answer. (GC Exh. 1(e)) If an employer legitimately claims that an information request is unduly burdensome or overbroad but fails to raise the claim at the time of the request, “any issue concerning the possible burden of complying with the Union’s request undermines its claim of burdensome as a defense.” *Mission Foods*, above at 789; *Anthony Motor Co., Inc.*, 314 NLRB 443, 451 (1994) Thus, “[i]f, for example, the employer has a legitimate claim that a request for information is unduly burdensome or overbroad, it must articulate those concerns to the union and make a timely [emphasis added] offer to cooperate with the union to reach a mutually acceptable accommodation.” *United Parcel Serv. Of Am., Inc.*, 362 NLRB 160, 162 (2015), citing *Mission Foods*, 345 NLRB 788, 789 (2005)

Finally, Respondent’s argument in its brief that the Union’s information request is overbroad because “it far exceeds the period of time at issue in the underlying grievance in that it seeks 3 years of data” is based on misstated facts. Respondent asserts that the Union “waived any right to prosecute or seek damages for alleged contract violation dating back 3 years by failing to file the grievance within 30 days of first learning of the violations.” In support of this

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12 Any such attempts to discuss or negotiate such which may have occurred in the process of settlement or discussions in connection with the filing of the underlying charge or complaint do not satisfy Respondent’s obligation in this case. Federal Rules of Evidence (FRE) 408.
argument, Respondent claims in its brief that the Union knew that it had been using nonunion members to perform air filter service and grease hood cleaning in the Spring of 2020 but “did not file grievance until October 14, 2021.” (R. Br. At 10–11) This argument is baffling and beyond belief in that the Union actually filed its grievance on October 14, 2020 and not in 2021 and that it was well within 6 months from the time the Union discovered Respondent’s purported contract violation in 2020. Further, Masino made it clear that it sought information going 3 years prior to the grievance to the present to determine if and how long Respondent had been violating the contract. He also believed that this was as far back as the Union’s grievance process permitted. (Tr. 45; GC Exh. 7).

Therefore, I find Respondent has violated Section 8(a)(5) and (1) of the Act by not providing the information requested by the Union which is relevant and necessary for the Union Local 19 to process the pending grievance or otherwise carry out its representational duties.

CONCLUSIONS OF LAW

1. General Aire Systems, Inc. (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The International Association of Sheet Metal, Air, Rail & Transportation Workers (SMART), Sheet Metal Workers Local 19 (SMW Union Local 19) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, SMW Union Local 19 has been the designated exclusive collective-bargaining representative of Respondent’s employees, in the following appropriate units for the purposes of collective bargaining within Section 9(b) of the Act:

   The employees covered by Article 1 (Scope of Work) of the Agreement between the Sheet Metal Contractors’ Association of Philadelphia and Vicinity (SMCA Phila) and the Union which is effective by its terms from May 1, 2019 through April 30, 2022.

   The employees covered by Article 1 (Scope of Work) of the Agreement between the Sheet Metal Contractors’ Association of Central Pennsylvania (SMCA-Central PA) and the Union which is effective by its terms from June 1, 2019 through May 31, 2022.

4. By failing and refusing to furnish the SMW Union Local 19 with the information requested on June 9, 2021, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices described above have affected commerce within the

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13 Van Buren provided uncontradicted testimony that the Union discovered Respondent’s ad for employees in the spring or summer of 2020 (Tr. 90; GC Exh. 7)
meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall order that Respondent cease and desist from failing and refusing to bargain collectively and in good faith with SMW Union Local 19 by failing and refusing to furnish the SMW Union Local 19 with all of the information, determined herein to be relevant and necessary to its representational duties, requested on June 9, 2021. Therefore, I shall order Respondent to immediately and completely furnish SMW Local 19 with all of the information requested on June 9, 2021.

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

ORDER

The Respondent, General Aire Systems, Inc., Darby, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with SMW Union Local 19 as the exclusive collective-bargaining representative of the units described above by failing and refusing to furnish the SMW Union Local 19 with the information requested on June 9, 2021.

(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) Immediately and completely furnish the SMW Union Local 19 with all of the information requested on June 9, 2021.

(b) Within 14 days after service by the Region, post at its facility in Darby, Pennsylvania copies of the attached notice marked “Appendix.”15 Copies of the notice, on forms provided by the Regional Director for Region 4, 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

14 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.

15 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.”
notices to employees are customarily posted. In addition to physical posting of paper notices, the 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 June 9, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director 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. February 4, 2022

Donna N. Dawson
Administrative Law Judge
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 fail and refuse to bargain collectively and in good faith by failing and refusing to furnish the SMW Union Local 19 with all of the information requested on June 9, 2021.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately and completely furnish the SMW Union Local 19 with all of the information requested on June 9, 2021.

GENERAL AIRE SYSTEMS, INC.

(Employer)

Dated ____________________ By ____________________

(Representative) (Title)

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.nlrb.gov.

National Labor Relations Board, Region 4
100 East Penn Square, Suite 403, Philadelphia, PA 19107-6293
(215) 597-7601 Hours: 8:30 a.m. to 5 p.m.
The Administrative Law Judge’s decision can be found at www.nlrb.gov/case/04-CA-279137 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, (215) 597–5354