This case was submitted for advice as to: (1) whether the Employer violated Section 8(a)(5) when it refused to provide information to, or process a grievance filed by the [b](6), [b](7)(C); and (2) whether the Employer was excused from its bargaining obligation once it requested a copy of the service agreement and the Union refused to provide it. We conclude that the Employer unlawfully refused to provide information and process the grievance because [b](6), [b](7)(C) was appointed pursuant to a valid service agreement that the Employer was not entitled to obtain.

FACTS

Aase Haugen Senior Services (“Employer”) operates a nursing home in Decorah, Iowa. Since the 1990s, Service Employees International Union Local 199 (“Union”) has represented a unit of service and maintenance employees. The parties most recent collective-bargaining agreement became effective on August 5, 2020 and expires August 4, 2022.
The collective-bargaining agreement includes a grievance-arbitration procedure. A Step 1 grievance must be initiated within 15 working days after the occurrence giving rise to the grievance and can be taken up by the grievant with the department manager, with or without the steward’s involvement. If the employee does not receive a response within two days, it is construed as an automatic denial. At Step 2, the grievance must be submitted in writing on a form provided by the Union and presented to the administrator within 10 working days of the Step 1 denial. The administrator then has 10 working days to issue a written decision; the failure to do so is construed as an automatic denial. Steps 3 and 4, respectively, which are not at issue in this case, provide for mediation and arbitration if the Union so chooses.

On January 11, 2021, the Union and United Food and Commercial Workers Local 431 entered into a service agreement covering four bargaining units for which the Union is the Section 9(a) representative. One of those units is the above-mentioned unit at the Employer’s nursing home.

According to the terms of the service agreement, the Union retains ultimate responsibility for collective-bargaining matters and liability for any breaches of the duty of fair representation. However, during the life of the agreement, will negotiate and administer the collective-bargaining agreements and represent the units’ members in grievances, arbitrations, labor-management meetings, and similar bargaining matters. In practice, this means that regularly updates the Union on work performed for the covered units. For example, informs the Union when it signs up new members, speaks with employers, or has an issue with one of the units and copies the Union on nearly all e-mail correspondence regarding the covered units. Further, in practice, is limited in its authority to act on the Union’s behalf. For example, even though is responsible for negotiating collective-bargaining agreements, it was not permitted to reopen the contract covering a different unit before its expiration upon the employer’s request.

In exchange for these services, the Union will pay all membership dues except those transmitted to the Union’s international. The agreement is effective for one year, unless terminated by the parties. Both parties retain the right to terminate the agreement unilaterally with 30 days’ notice. Alternatively, the agreement will automatically terminate if is recognized or certified as the units’ exclusive bargaining representative, which was the parties’ ultimate objective.

On the day the service agreement was signed, the Union informed the Employer via e-mail that, pursuant to the service agreement, would be “responsible[e] for all aspects of representation, including disciplinary matters, grievances, and collective bargaining,” and provided contact information. The Employer did not respond.

1 All dates hereafter are in 2021.
On March 1, the Union sent an e-mail to the Employer introducing a Step 1 grievance (submitted on the Union’s form) regarding a disciplinary action issued to a unit employee, an information request pertaining to that grievance, and a separate information request for unit job descriptions, which were never furnished. The e-mail was copied on the e-mail.

On January 29, the Employer responded by denying the grievance as “invalid” because it was not aware of any legal basis that would permit to file a grievance. The Employer invited to provide applicable legal or factual support for its position that the grievance was validly submitted.

On January 30, the Union responded to the Employer, reiterating that the Union had contracted with to provide representation services to the employees. The Union explained that the service agreement “does not change the contractual relationship between [the Union] and [the Employer]. The contract hasn’t changed and the parties to the contract haven’t changed either. What has changed is that a different person will be handling some of the matters related to contract administration.” (Emphasis added.) The Union also noted that the grievance and information requests were submitted at the Union’s behest and that those should be responded to as if they came from the Union.

On February 1, counsel for the Employer requested a copy of the service agreement and “any arrangements, agreements or understandings” between the Union and in order to assess whether there was an improper transfer of Section 9(a) responsibilities. The Union declined to provide a copy of the service agreement and took the position that its January 30 e-mail was a request for information directly from the Union that must be honored, without regard to the Employer’s concerns about the relationship. The Employer, which refused to furnish information until it received a copy of the service agreement.

On February 12, counsel for the Union explicitly reiterated the grievance-related information request, and the Employer provided a partial response one week later. Among other things, the Employer’s response contended that: (1) there was no pending grievance because it was submitted by whose legal authority to represent the employees was uncertain without reviewing the service agreement; and (2) even if there were a valid grievance, the Employer’s failure to respond within two days would automatically be deemed a denial and the Union missed the deadline to

2 Although the grievance was submitted by rather than the grievant, all parties considered it a Step 1 grievance.
The Employer thereafter persisted in its refusal to deal with [REDACTED] advance it to Step 2. The Employer's defense—that it was privileged to refuse to deal with [REDACTED] because the Union would not provide the service agreement—must be rejected because the agreement is a matter of internal union governance, and therefore not presumptively relevant, and the Employer failed to demonstrate any objectively reasonable basis for obtaining it.

I. The service agreement is valid.

It is well settled that a Section 9(a) bargaining representative may designate an agent to represent employees on its behalf, including for the purpose of contract administration or grievance handling, and that the agent may be another union. Although a representative may delegate its duties to an agent, it cannot transfer or delegate its Section 9(a) responsibilities, in particular, its statutory duty of fair representation. There are two reasons for this: from the standpoint of represented employees, only they have the statutory power to confer Section 9(a) status upon a chosen representative; from the employer’s perspective, the Act does not impose an obligation to recognize and bargain with any representative other than the certified or lawfully recognized Section 9(a) representative.

Accordingly, the Board has found service agreements between unions invalid where they conferred an outright substitution of Section 9(a) responsibilities rather than the opportunities for an accommodation that balances its confidentiality concerns with the Union’s need for the information. This issue was not submitted for advice.

3 The Employer also asserted that some of the requested information was confidential under state dependent abuse laws. The Region disagrees with the Employer’s interpretation of state law and concluded that, in any event, the Employer had a duty to bargain with the Union over an accommodation that balances its confidentiality concerns with the Union’s need for the information. This issue was not submitted for advice.

4 Goad Co., 333 NLRB 677, 679 (2001); Mine Workers Local 17 (Joshua Industries), 315 NLRB 1052, 1064 (1994) (finding international union had designated locals and districts as its agents for processing grievances), enforced per curiam, 85 F.3d 616 (4th Cir. 1996) (table).

5 Goad, 333 NLRB at 679-80.
than a delegation of duties from a principal to an agent.\(^6\) To determine whether there was a valid delegation of duties or an unlawful substitution, it is appropriate to review the service agreement and the conduct of the unions. The Board considers such factors as the scope of the functions and duties delegated to the agent union;\(^7\) the oversight that the principal union retains over the administration of the collective-bargaining agreement;\(^8\) actions or statements by the principal union evidencing that it has

\(^6\) Compare *Goad*, 333 NLRB at 677 n.1 (Section 9(a) representative “did not simply enlist the aid of an agent, but transferred its representational responsibilities” to the agent), and *Sherwood Ford*, 188 NLRB 131, 134 (1971) (service agreement invalid where “the parties were attempting an outright substitution of representatives” rather than an “association of expert aides”), with *Hyatt Regency Atlanta*, Case 10-CA-038863, Advice Memorandum dated August 16, 2011, at 5 (service agreement valid on its face where principal explicitly retained ultimate responsibility for collective-bargaining matters and duty of fair representation but delegated representation and bargaining duties to the agent).

\(^7\) See *Goad*, 333 NLRB at 679-80 (service agreement amounted to substitution of representative where purported agent was responsible for negotiating and administering the contract, including processing grievances and “other actions comprising the duty of representation”).

\(^8\) See *id.* at 678 (invalid service agreement provided no representational role for, or oversight by, principal union); *Sherwood Ford*, 188 NLRB at 132, 134 (service agreement directing principal union “to follow and carry out all instructions received from” its agent conflicted with basic agency law principle that the “principal controls the agent, not the reverse”). Cf. *Hyatt Regency Atlanta*, at 2, 5 (valid service agreement required agent’s staff to meet regularly with principal, provide advance notice of membership meetings, and obtain approval before sending major correspondence); *Suburban Pavilion, Inc.*, Case 08-CA-033560, Advice Memorandum dated February 20, 2003, at 4, 8-9 (service agreement valid where agreement provided opportunities for oversight and principal exerted actual control and oversight over its agent and day-to-day administration of the collective-bargaining agreement).
relinquished its Section 9(a) role or subverted the principal-agent relationship; and evidence that the service agreement was devised to circumvent a failed attempt before the Board to substitute the agent as the employees’ Section 9(a) representative.

Applying these principles, we conclude that the service agreement at issue is facially valid because its provisions—and the parties’ conduct—respect traditional agency principles. While the agreement delegates a broad scope of duties to , it is significant that here the agreement reserves to the principal ultimate responsibility for collective-bargaining matters and liability for any breaches of the duty of fair representation. Commensurate with the broad scope of its authorized

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9 Compare Goad, 333 NLRB at 678, 680 (finding principal attempted to transfer Section 9(a) responsibility to agent by forwarding to the agent “any and all membership initiation fees and dues received directly or indirectly from [the employer’s] employees”), with Hyatt Regency Atlanta, at 5-6 (principal retained Section 9(a) role where agent’s services were rendered for a set fee amounting to a portion of the dues with additional agreed-upon reimbursable costs for “special or particularly time-consuming services”).

10 See Goad, 333 NLRB at 678-80 (indemnification of the principal against any breach of duty of fair representation claims arising out of the agent’s service “stands the law of agency on its head” and confirmed that principal was “bowing out” as the representative); see also Arlen Beach Condominium Association, Inc., Case 12-CA-24507, Advice Memorandum dated November 8, 2005, at 10 (service agreement “believe[d] the existence of a bona fide agency relationship” where the agent’s regional vice president was the final arbiter of any disputes under the service agreement and the agent’s consent was required to terminate the agreement).

11 See Goad, 333 NLRB at 680 (service agreement invalid where its intent was to circumvent final agency determination that the employer was not obligated to bargain with the purported agent); Sherwood Ford, 188 NLRB at 131-32 134 (service agreement invalid where it was a device to circumvent adverse rulings by regional director on representation petition and refusal-to-bargain charge).

12 Cf. National Union of Healthcare Workers (Kaiser Foundation Hospitals, Inc.), Cases 31-CB-140496 et al, Advice Memorandum dated June 12, 2015, at 10 (agreement overbroad where it failed to reserve collective-bargaining or representational duties for the principal, indemnified the principal against all claims related to the agent’s performance, required all dues be remitted to the agent, and required the agent’s consent to cancel the agreement).

13 Cf. Arlen Beach, at 10.
duties, receives a substantial portion of the units’ dues, but those dues were not increased when was introduced. Finally, unlike the two cases where the Board found service agreements invalid, Goad and Sherwood Ford, this service agreement was not precipitated by a failed attempt to transfer representation from one union to another.

Moreover, the Union and conduct is consistent with a bona fide principal-agent relationship. In sharp contrast to the principal in Arlen Beach that was so uninvolved that it did not know whether the agent had access to the employer’s facility or how or if the agent was communicating with the unit, the Union here oversees work by receiving regular updates on how is servicing the covered units and reviewing nearly all correspondence. In practice, the Union also retains authority over significant bargaining positions, such as whether to reopen a contract, which the parties view as a matter outside the scope of authority. By contrast, when the employer in Arlen Beach expressed interest in cancelling the parties’ collective-bargaining agreement, the agent agreed to negotiate without even involving the principal.

14 The Employer’s employees only comprise one of the four units covered by the service agreement. service fee for all four units is calculated the same.

15 Cf. Goad, 333 NLRB at 680 (forwarding all dues and fees to purported agent further confirmed substitution of agent as bargaining representative); Sherwood Ford, 188 NLRB at 134 (doubling of dues to conform with agent’s dues schedule supported finding the parties sought to substitute representatives).

16 That the service agreement contemplates eventually transferring jurisdiction over the unit to has no impact on the validity of the service agreement where, as here, the agreement is a valid delegation and the parties did not execute it to circumvent an adverse Board determination. See Hyatt Regency Atlanta, at 6-7; National Union of Healthcare Workers, at 11 (It is “not uncommon for a service agent’s ultimate goal to be representation of the unit” and if the employees were to select the agent union as bargaining representative in an election, “no policy of the Act would be offended by the fact that the [agent union] gained support of employees from its service as agent of [the principal union].”).

17 Arlen Beach, at 4 n.6.

18 Id. at 4.
II. **The Employer was not entitled to review the service agreement or refuse to deal with [b] (6), (b) (7)(C) until it was furnished.**

A union’s duty to furnish information under Section 8(b)(3) is parallel to that of an employer under Section 8(a)(5).\(^{19}\) Regardless of which party makes the request, the standard for relevance is a liberal, discovery-type standard that requires only the probability that the information will be useful to a party in carrying out its statutory duties.\(^{20}\) Where the information requested pertains to employees within the bargaining unit, the information is presumptively relevant.\(^{21}\) However, when the request is for information outside the bargaining unit, the requesting party must demonstrate the reasonable and probable relevance of the requested information.\(^{22}\) A requesting party must offer more than mere “suspicion or surmise” or “concoction of some general theory which explains how the information would be useful” for it to be entitled to the information.”\(^{23}\) Otherwise, the requesting party would have “unlimited access to any and all data” held by the other party.\(^{24}\)

An employer can satisfy this burden by establishing an “objective, factual basis” for believing that information would be relevant in determining the entity to which it has a bargaining duty.\(^{25}\) In *SEIU Local 715 (Stanford Hospital)*, the employer was entitled to information about the Section 9(a) union as well as its sister local with which it claimed to have merged because the union and its service agent provided contradictory information about whether the union continued to exist.\(^{26}\) First, the service agent presented itself to the employer as the sole representative of the unit and instructed the employer to remit dues directly to it.\(^{27}\) Then, the union announced that it was merging with a sister, public sector local but that jurisdiction over private

\(^{19}\) *Iron Workers Local 207 (Steel Erecting Contractors)*, 319 NLRB 87, 90 (1995).

\(^{20}\) *SEIU Local 715 (Stanford Hospital)*, 355 NLRB 353, 355 (2010).

\(^{21}\) *Hotel & Restaurant Employees Local 226 (Caesars Palace)*, 281 NLRB 284, 288 (1986).

\(^{22}\) *Id.*

\(^{23}\) *Id.* (quoting *Southern Nevada Builders Assn.*, 274 NLRB 350, 351 (1985)).

\(^{24}\) *Id.*

\(^{25}\) *Stanford Hospital*, 355 NLRB at 355.

\(^{26}\) *Id.* at 355-56.

\(^{27}\) *Id.* at 353.
sector units, such as the employer’s, would be transferred to the service agent. Finally, the unit’s chief steward asserted that the union no longer existed and that the service agent represented the unit—consistent with information on the entities’ websites—while counsel for the union asserted that the union still represented the unit. Given that conflicting information, the employer’s request for information pertaining to an outside union was relevant to the employer’s legitimate interest in determining whether the original Section 9(a) union continued to exist.

Once the employer establishes a right to non-presumptively relevant information probative of its bargaining obligation, it may be relieved of its duty to bargain until it receives the information. Such was the case in Newell Porcelain Co., where the certified union affiliated with an international union and then generated confusion about which entity was the true bargaining representative. There, the employer proposed during contract negotiations to update the recognition clause to reflect the affiliation, but the international repeatedly rejected that change. Instead, the international proposed language recognizing itself (together with a new local chartered for the unit) instead of the original, now-affiliated union and asserted in subsequent correspondence that it was the collective-bargaining representative. The employer raised its concern that the international seemed to be displacing the affiliated union, but responses from the international failed to clarify which party was holding itself out as the bargaining representative. Given those facts, the Board found the employer was justified in suspending bargaining pending clarifying information from the union.

When there is ambiguity as to the relationship between two unions, the Board places a duty on the employer to seek clarity before suspending bargaining, and if the recognized union subsequently clarifies its relationship, the employer must honor its bargaining obligation. See Parkview Manor, where an outside union’s demand for

28 Id.
29 Id.
30 Id. at 356.
31 307 NLRB 877, 877-78 (1992), affirmed, 986 F.2d 70 (4th Cir. 1993).
32 See Parkview Manor, 321 NLRB 477, 477 & n.2 (1996) (distinguishing Newell Porcelain where employer made no attempt to clarify two unions’ relationship), overruled on other grounds by Premier Living Center, 331 NLRB 123 (2000); see also Armored Transport, 334 NLRB 143, 147-48 (2001) (employer had an obligation to inquire about any perceived ambiguities as to entities’ relationship after receiving agent’s notice of agency designation), enforcement denied sub nom. AT Sys. W., Inc. v. NLRB, 294 F.3d 136 (D.C. Cir. 2002).
bargaining and information was made on its own letterhead and without reference to the certified union, the Board found that any ambiguity created by that demand was sufficiently clarified when the certified union filed an unfair labor practice charge referring to the earlier letter. Thus, the employer had no defense to its failure to bargain and supply information.

The service agreement at issue here is not presumptively relevant because it is a matter of internal union governance. Furthermore, the Employer has no “objective, factual basis” for asserting that the service agreement is invalid. The evidence does not demonstrate that the Union engaged in the type of conduct that would have suggested an invalid principal-agent relationship existed. did not demand to be recognized as the bargaining representative, as the international did in Newell Porcelain, nor was the Employer asked to remit dues directly to , as occurred in SEIU 715 (Stanford Hospital). Although the Employer appears concerned about the possible delegation of all representational duties based on the January 11 and 27 emails, we find that those communications were consistent with a valid, albeit broad, delegation of duties and did not reasonably signal that there had been a wholesale substitution of representatives.

Moreover, the Union’s January 30 e-mail provided even more clarity regarding the nature of the Union and than the Board has deemed sufficient. In Parkview Manor, the principal union did not clarify its relationship to

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[33] 321 NLRB at 477.

[34] Id. See also Richmond Times-Dispatch, 338 NLRB 873, 874 (2003) (agent’s letter requesting bargaining and information coupled with principal’s unfair labor practice charge referencing the agent’s request constituted valid demand for bargaining and information), enforced sub nom. NLRB v. Media Gen. Operations, Inc., 360 F.3d 434 (4th Cir. 2004).

[35] Cf. Service Employees Local 535 (North Bay Center), 287 NLRB 1223, 1223 n.1, 1225-26 (1988) (union had no duty to provide information concerning amount of agency fee, an internal union matter), affirmed, 905 F.2d 476 (D.C. Cir. 1990); Stanford Hospital, 355 NLRB at 355 (union not required to disclose whether legal representative was selected pursuant to an arrangement with union’s service agent where not relevant to the collective-bargaining relationship nor relevant to whether the principal union remained in existence).

[36] Stanford Hospital, 355 NLRB at 355.

[37] 307 NLRB at 877-78.

[38] 355 NLRB at 353.
the agent until it filed an unfair labor practice charge with the Board. Here, when the Employer raised the issue of authority, the Union promptly responded by explaining the relationship and reaffirming that the Union was still the employees’ representative. The Union also clarified that scope of authority is limited to “some” contract administration matters, further dispelling any notion that the service agreement was an attempt to substitute for the Union. Finally, in that e-mail, the Union explained that grievance and information requests were submitted at the Union’s behest and should be responded to as if they came from the Union itself. Thus, the January 30 email effectively allayed any possible concern that might be displacing the Union and reinforced that the agency relationship was valid, thereby undercutting any need for the Employer to review the service agreement.

39 321 NLRB at 477. See also Richmond Times-Dispatch, 338 NLRB at 874.
Because the Employer was not entitled to review the service agreement, it is not permitted to use the Union’s failure to provide the agreement as a defense to its refusal to deal with grievance handling and information requests.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to provide information requested by the Union and process a grievance submitted by R.A.B.

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40 Although a refusal to process a single grievance is not typically considered an unfair labor practice, here the Employer’s refusal to deal with the Union’s failure to test the Employer’s willingness to process the grievance—by not advancing it to Step 2—warrants dismissal of this allegation. Notwithstanding the Employer’s characterization of its Step 1 response as a denial, it was more akin to a blanket refusal to deal with an authority rather than a mere denial based on the particular facts of the grievance. Thus, the Union cannot be faulted for failing to have advance the grievance to Step 2, since such action would have been futile in these circumstances. Cf. Lauren Mfg. Co., 270 NLRB 1307, 1309 (1984) (union excused from making “futile gesture” of requesting bargaining over proposed change to health benefits where employer had completely refused to bargain for 15 months in order to test certification); Sunnyland Refining Co., 250 NLRB 1180, 1181 n.3 (1980) (“[O]nce a union requests bargaining and an employer states it is refusing to bargain in order to test the certification, it is futile and unnecessary for the union to continue to request bargaining.”), enforced, 657 F.2d 1249 (5th Cir. 1981) (table).

41 Given that the grievance was validly submitted and the Union was excused from advancing it to Step 2, the Employer cannot rely on the lack of an active “pending” grievance as a basis for refusing to fully respond to the related information request.