These cases were submitted for advice as to whether the Employer violated Section 8(a)(5) and (3) by unilaterally blocking its employees from accessing the online health insurance portal on in-store computers, and violated Section 8(a)(5) by rejecting the Union’s request for internal communications about the Employer’s decision to do so. We conclude that the Employer violated Section 8(a)(5), (3), and (1) by unilaterally suspending the past practice of permitting employees to use in-store computers to enroll in, modify, or review health insurance benefits. We further conclude that the Employer violated Section 8(a)(5) and (1) by refusing to respond to the Union’s information request. Thus, each Region should issue complaint, absent settlement, alleging these violations.1

FACTS

Kroger Texas, L.P. (“the Employer”) operates a chain of grocery stores in Louisiana and Texas. United Food and Commercial Workers Local 455 (“the Union”) represents separate bargaining units of store clerks and meat cutters in the

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1 Although this memorandum addresses the charges filed in each Region as being processed separately. (b) (5)
Employer’s Houston and Dallas Divisions. For the past 20 years, the Employer has provided its employees with the non-contractual benefit of allowing them to enroll in, modify, or review health insurance benefits by using a computer in each store that allows them to access their personal accounts on the healthcare portal/website.

Since February 2020, negotiations for successor collective-bargaining agreements (“CBAs”) have been ongoing in the Houston Division, but negotiations for the Dallas Division will not commence until after agreements have been reached for the Houston Division. Historically, healthcare benefits have been provided to unit employees in both the Houston and Dallas Divisions through the South Central Trust Fund (“the Fund”), a Union-sponsored healthcare plan that is jointly administered with the Employer. During negotiations, however, the Employer objected to continued use of the Fund and proposed an Employer-administered healthcare plan, whereas the Union proposed continued use of the Fund or that it be merged with another Union-sponsored fund. The CBAs for the Houston Division expired on August 15. The Employer claims that the parties reached impasse in negotiations for that division on August 19—a claim the Union denies. The CBAs for the Dallas Division expired on August 29.

In late September, employees at stores in both Texas and Louisiana who attempted to access the healthcare portal via an in-store computer discovered that the website was blocked without explanation. Upon investigation, the Union determined that most, if not all, of the in-store computers in the Employer’s Houston and Dallas Divisions could not access the healthcare portal. Employees could still access the healthcare portal through their personal computers or smartphones; however, many employees were accustomed to relying on the in-store computers to enroll in, modify, or review health insurance coverage, print important documents, and ask co-workers or management for assistance performing these tasks.

The Union immediately notified the Employer that employees could not access the healthcare portal via in-store computers, and, on September 30, the Employer restored access to the stores in the Dallas Division. On October 1, the Union filed grievances protesting the change and submitted information requests for “any and all communications by memo, email, or any other means, dealing with store computer access to the [healthcare portal] between and among anyone in Kroger management and Kroger I.T. and/or Kroger Corporate Information Security.” Over the course of the next several weeks, the Union also filed charges in both Region 15 and 16 alleging

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2 Each division includes stores located in Louisiana and Texas.

3 All dates are in 2020 unless otherwise noted.
that the Employer had violated Section 8(a)(5) and (1) by unilaterally blocking in-store access to the healthcare portal and refusing to comply with the Union’s request for information. On October 14, the day before the scheduled beginning of the open enrollment season for the Fund, the Employer restored access to the healthcare portal in the Houston Division.

In late October, the Employer responded to the Union’s grievances. The Employer’s October 27 response to the grievances for the Dallas Division, where there was no ongoing bargaining, stated that in-store access to the healthcare portal was neither a negotiated benefit nor a subject covered by the relevant CBAs. The Employer further denied having any knowledge of access issues, asserting that if access had been blocked “by the Company,” it had been restored. The Employer’s October 30 response to the grievances for the Houston Division, where there had been bargaining but the Employer declared impasse over two months earlier, denied the loss-of-access grievance on similar grounds. In this later response, the Employer also rejected the Union’s information request on the bases that the information sought was neither relevant nor necessary to the Union’s role as a bargaining agent, and the information contained privileged materials. The Employer also stated that it is not in possession of any documents responsive to the request.

On November 5, the Union objected to the Employer’s denial of the grievances, renewed its October 1 information requests, and expanded on those requests by asking that the Employer provide, “communications with employees informing them of how to access the enrollment portal.” On November 16, the Employer reiterated the same reasons previously given for denying the Houston and Dallas grievances. In that response, the Employer provided a timeline of events in which it acknowledged that it had blocked access to the healthcare portal on in-store computers in both divisions on September 21 but returned access to the Dallas Division on September 30, and to the Houston Division on October 14. The Employer further reiterated that the dispute was not covered by the CBAs and stated the dispute was moot, that

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4 Regions 15 and 16 received a charge alleging the unlawful unilateral change on October 7 and 26, respectively.

5 Regions 15 and 16 received the charge protesting the Employer’s failure to comply with the Union’s request for information on October 13 and 7, respectively.

6 The open enrollment period, during which employees may enroll in, modify, or cancel health insurance benefits, had been scheduled to run from October 15 to December 15; however, the parties agreed to extend the closing date to December 31 to account for the Employer’s prior blocking of access to the healthcare portal on in-store computers.
internal communications about blocking access to the healthcare portal were privileged, and it had no record of communications with employees that would be responsive to the Union’s new information request.

Shortly thereafter, the Employer filed position statements with each Region in which it revealed that it had “blocked access to the Fund administrator’s enrollment website, based on concerns that the Union would use the site to confuse associates regarding the status of ongoing contract negotiations as they pertain to open enrollment in healthcare and where to sign up for coverage in 2021.” Based on this statement, on January 5, 2021 and April 12, 2021, the Union amended its charges in Region 15 and 16, respectively, to allege that the Employer’s conduct also had violated Section 8(a)(3).

**ACTION**

We conclude that the Employer violated Section 8(a)(5) and (1) by unilaterally blocking employee access to the healthcare portal on in-store computers because terminating that past practice constituted a material, substantial, and significant change to a mandatory subject of bargaining. We further conclude that the Employer violated Section 8(a)(3) and (1) by this unilateral action because it was tantamount to retaliation against the employees for their Union’s refusal to acquiesce to the Employer’s bargaining demand to abandon the Fund as the employees’ healthcare insurance. Finally, we conclude that the Employer violated Section 8(a)(5) and (1) by refusing to provide the Union with requested information that was relevant to the Union’s collective bargaining responsibilities.

I. The Employer violated Section 8(a)(5) and (1) by unilaterally blocking employee access to the healthcare portal on in-store computers.

After a CBA expires, an employer has “a duty to maintain the status quo” while bargaining for a successor agreement by not unilaterally changing those employment terms in the expired CBA that involved mandatory subjects of bargaining. The obligation to maintain the post-expiration status quo includes any past practices that

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7 *KOIN-TV*, 369 NLRB No. 61, slip op. at 3 (2020), enforced, 4 F.4th 801 (9th Cir. 2021); see *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 199, 206 (1991) (holding that after a contract expires, most “terms and conditions continue in effect by operation of the NLRA. They are no longer agreed-upon terms; they are terms imposed by law”; also noting that certain mandatory subjects, such as no-strike clauses, do not extend beyond contract expiration).
involved mandatory subjects. “Healthcare insurance benefits, like wages and hours, are a mandatory subject of collective bargaining and, as such, . . . an employer may not alter them without bargaining to agreement or to a good-faith impasse.” The Board heavily scrutinizes unilateral changes to healthcare benefits and has found violations where the employer changes the identity of the health insurance provider, impairs employee choice or discretion, or alters the employees’ share of the cost. Indeed, as an indicator of the importance that the Board places on all aspects of healthcare benefits being subject to bargaining, it has held that the procedures for notifying employees of and enrolling them in health insurance plans are also mandatory subjects of bargaining.

8 See ABF Freight Systems, Inc., 369 NLRB No. 107 slip op. at 2 (2020); Raytheon Network Centric Systems, 365 NLRB No. 161, slip op. at 16, 18 (2017); Sunoco, Inc., 349 NLRB 240, 244 (2007).

9 E.I. Du Pont de Nemours, 364 NLRB No. 113, slip op. at 7 (2016), overruled on other grounds, Raytheon Network Centric Systems, 365 NLRB No. 161, slip op. at 1-2; see also Caterpillar, 355 NLRB 521, 522 (2010), enforced per curiam, 2011 WL 2555757 (D.C. Cir. 2011); United Hospital Medical Center, 317 NLRB 1279, 1281 (1995).

10 See, e.g., Seiler Tank Truck Service, 307 NLRB 1090, 1100 (1992) (“The identity of the health insurance carrier is as much a mandatory subject of bargaining as is the level of benefits to be enjoyed by employees.”); Caterpillar, 355 NLRB at 523 (concluding that the employer's unilateral implementation of a “generic first” model usurped the employees’ discretion to decide between generic and brand-name prescriptions and also increased the cost; therefore, it constituted a material, substantial, and significant change). An employer violates Section 8(a)(5) and (1) even by unilaterally implementing improved healthcare benefits. See Orchids Paper Products Co., 367 NLRB No. 33, slip op. at 1 & n.6 (2018) (finding employer violated Section 8(a)(5) and (1) by unilaterally implementing what appeared to be an improved healthcare plan that offered employees a broader network, lower premiums, and no need for physician referrals because “whether the changes were beneficial or detrimental does not affect the employer’s duty to bargain”).

11 See B&B Trucking, 345 NLRB 1, 5 (2005) (finding employer violated Section 8(a)(5) by, among other things, unilaterally changing the open enrollment period for health benefits); Western Cab Co., 365 NLRB No. 78, slip op. at 2, 3 (2017) (finding employer seeking to comply with terms of Affordable Care Act violated Section 8(a)(5) by failing to bargain over, among other things, discretionary procedures for notifying and enrolling employees in a health insurance plan).
However, an employer violates Section 8(a)(5) and (1) by unilaterally changing an employment term involving a mandatory bargaining subject only if the change is material, substantial, and significant.\footnote{Caterpillar, Inc., 355 NLRB at 522.} The bar to show that a unilateral change materially affected employees’ terms and conditions of employment is not particularly high. Indeed, the Board has characterized a change as material, substantial, and significant so long as it is not de minimis.\footnote{See Rangaire Co., 309 NLRB 1043, 1043 (1992) (finding employer’s unilateral withdrawal of an extra 15-minute lunch break once per year on Thanksgiving violated Section 8(a)(5)), enforced mem., 9 F.3d 104 (5th Cir. 1993); Litton Systems, 300 NLRB 324, 331 n.34 (1990) (finding employer’s unilateral elimination of extra half hour for lunch on Christmas Eve violated Section 8(a)(5)), enforced, 949 F.2d 249 (8th Cir. 1991), cert. denied, 503 U.S. 985 (1992).} Even minor increases in the burdens that employees face, such as eliminating employees’ ability to donate blood while on the clock twice per year, violate Section 8(a)(5).\footnote{See Verizon New York, 339 NLRB 30, 37-38 (2003), enforced, 360 F.3d 206 (D.C. Cir. 2004).}

Application of these principles compels finding that the Employer’s unilateral blocking of employee access to the healthcare portal on in-store computers satisfied the Board’s modest standard for constituting a material, substantial, and significant change in employment terms that violated Section 8(a)(5) and (1). For the past twenty years, many employees relied exclusively on the Employer’s past practice of providing access to its in-store computers to allow employees to sign-up for, modify, cancel their healthcare coverage or even just review various aspects of the coverage. Indeed, the Employer took unilateral action regarding this established procedure to further its bargaining position by impairing its employees’ ability to enroll in, modify, or review Fund benefits, which could facilitate a switch to the healthcare plan the Employer proposed during bargaining for the Houston Division. As a result, employees at stores in both divisions attempted to access the portal on in-store computers in late September only to find they could not. These facts establish that the Employer effected much more than a minimal change in its employees’ terms and conditions of employment.

Nevertheless, the Employer proffers several reasons for why the change was not material and substantial. Each of those reasons lacks merit. Initially, the Employer emphasizes that its employees still had access to the healthcare portal through their

\begin{itemize}
  \item \textit{Caterpillar, Inc.}, 355 NLRB at 522.
  \item \textit{See Rangaire Co.}, 309 NLRB 1043, 1043 (1992) (finding employer’s unilateral withdrawal of an extra 15-minute lunch break once per year on Thanksgiving violated Section 8(a)(5)), enforced mem., 9 F.3d 104 (5th Cir. 1993); \textit{Litton Systems}, 300 NLRB 324, 331 n.34 (1990) (finding employer’s unilateral elimination of extra half hour for lunch on Christmas Eve violated Section 8(a)(5)), enforced, 949 F.2d 249 (8th Cir. 1991), cert. denied, 503 U.S. 985 (1992).
\end{itemize}
personal computers or smartphones. However, it is not clear how many employees have those devices or the necessary internet access to reach the healthcare portal, especially during the COVID-19 pandemic.\textsuperscript{15} Use of in-store computers to access the portal was convenient especially during this time because employees, already having to report to their workplaces, were able to take advantage of the ability to print confirmations of their transactions or ask co-workers and management for assistance while navigating the portal to ensure proper updating of their health benefits. These two substantial attributes of in-store access may not have been available to those who attempted to access the portal via personal computers or smartphones. It is also worth noting that the Employer’s unilateral action in and of itself belies its argument that the ability to access the healthcare portal via personal computer or smartphone negated the significance of terminating the past practice. If blocking in-store access would not have significantly inhibited employees from signing up for health benefits available through the Fund, then there would have been no reason to execute such a scheme in the first place.

The Employer also asserts that its action was not a material change because employee access on in-store computers was blocked only for a short period of time that did not coincide with the yearly open season for enrolling in or modifying health benefits. However, by the Employer’s own admission it blocked access in the Houston Division for 24 days and in the Dallas Division for nine days. Thus, this was not a situation where the Employer immediately undid its unilateral change. Indeed, it may not have restored access but for the Union’s immediate and forceful complaints on behalf of the unit employees. Moreover, the change involved a complete blockage on in-store computers rather than a restriction to certain hours or stores, which meant that employees could not use those computers to simply review their existing benefits. As noted above, that employees at stores in each division attempted to use the in-store computers to access the healthcare portal during the relevant times and complained to the Union about their inability to do so establishes the importance of this past practice and the impact of the Employer’s unilateral change thereto.

\textsuperscript{15} Region 15 notes, for example, that Louisiana has one of the lowest percentages of computer ownership and internet subscriptions in the United States. Region 15 also notes that employees may have to incur out-of-pocket expenses to access the portal with their own devices and may not have had access to resources available to the public, such as computers at public libraries, due to the status of the pandemic in September and October 2020.
II. The Employer violated Section 8(a)(3) and (1) by unilaterally blocking employee access to the healthcare portal on in-store computers because this action was retaliation for the Union’s refusal to accept the Employer’s proposed healthcare plan.

An employer violates Section 8(a)(3) and (1) by adversely changing its employees’ terms and condition of employment because of their union activities. To prove a violation of Section 8(a)(3), the General Counsel bears an initial burden of establishing that employee union or other protected concerted activity was a motivating factor for the employer’s adverse employment action. To satisfy this initial burden, the General Counsel must show the presence of union or protected concerted activities, employer knowledge of those activities, and employer animus or hostility toward those activities. “Proof of discriminatory motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole.” Once the General Counsel makes that initial showing, the

16 See, e.g., Murphy Oil USA, 286 NLRB 1039, 1042-43 (1987) (finding employer retaliated against its employees’ prior strike activity and violated Section 8(a)(3) and (1) by unilaterally changing various work rules to eliminate certain workplace privileges); Vincent M. Ippolito, Inc., 313 NLRB 715, 722 (1994) (finding employer violated Section 8(a)(3) and (1) by unilaterally reducing hours), enforced mem., 54 F.3d 769 (3d Cir. 1995).

17 See Wright Line, 251 NLRB 1083, 1089 (1980), enforced, 662 F.2d 899 (1st Cir. 1982), cert. denied, 455 U.S. 989 (1982), approved in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983). See also Tschiggfrie Properties, Ltd., 368 NLRB No. 120, slip op. at 1, 7-8 (2019) (stating that the General Counsel’s burden under Wright Line requires evidence of animus to support finding that a causal relationship exists between employee protected activity and the employer’s adverse action). Here, the General Counsel can meet her Wright Line burden as interpreted in Tschiggfrie, but she disagrees with the Board’s decision in Tschiggfrie and will urge the Board to revisit that decision in appropriate cases.

18 See, e.g., Lucky Cab Co., 360 NLRB 271, 273-74 (2014), enforced per curiam, 621 F. App’x 9 (D.C. Cir. 2015).

19 Embassy Vacation Resorts, 340 NLRB 846, 848 (2003), quoted in Tschiggfrie Properties, Ltd., 368 NLRB No. 120, slip op. at 8.
burden of persuasion shifts to the employer to show that it would have taken the same adverse action even in the absence of any union or protected concerted activities by its employees.20

Applying a Wright Line analysis, we conclude that the Employer violated Section 8(a)(3) and (1) by unilaterally blocking employee access to the healthcare portal on in-store computers. The Employer admitted in its position statements to both Region 15 and 16 that it took this unilateral action to prevent employees from supporting the Union’s bargaining position by enrolling in or modifying benefits available through the Fund. Specifically, the Employer stated that it “blocked access to the Fund administrator’s enrollment website, based on concerns that the Union would use the site to confuse associates regarding the status of ongoing contract negotiations as they pertain to open enrollment in healthcare and where to sign up for coverage in 2021.”21 This statement reveals the Employer was frustrated by the Union’s refusal to acquiesce to its proposal during negotiations for the Houston Division to abandon the Fund’s healthcare plan for one sponsored by the Employer. Thus, the Employer acted unilaterally to undermine the Union’s bargaining position to maintain the Fund as the employee’s health insurance plan and, instead, facilitate a switch to the Employer’s proposed healthcare plan. Indeed, the timing of the Employer’s unilateral action further supports this conclusion where it unilaterally discontinued a twenty-year-old past practice one month after it had declared impasse in negotiations for the Houston Division, a declaration that the Union disputes.22

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20 Wright Line, 251 NLRB at 1089.

21 “It is well established Board law that respondent position papers submitted to the NLRB are admissible and can be construed as admissions.” UPMC, 366 NLRB No. 142, slip op. at 19, n.14 (2018); see also Florida Steel Corp., 235 NLRB 1010, 1011-12 (1978).

22 See, e.g., Murphy Oil USA, 286 NLRB at 1042-43 (finding timing supported conclusion that employer had unlawful motive for unilaterally changing several work rules where changes followed employees’ strike activity and the changes altered “longstanding” workplace practices).
In the absence of any evidence of a legitimate justification for the change, the Employer cannot satisfy its rebuttal burden. Thus, the Employer violated Section 8(a)(3) and (1) by making the unilateral change.

### III. The Employer violated Section 8(a)(5) and (1) by refusing to provide the information the Union first requested on October 1.

A collective-bargaining representative is entitled to information relevant and necessary to carrying out its statutory duties and responsibilities, including negotiating over mandatory bargaining subjects and policing a collective-bargaining agreement. When the requested information deals with the terms and conditions of employment of bargaining unit employees, the Board will deem the information presumptively relevant and necessary to the union’s performance of its statutory duties. Once relevance has been established, an employer cannot withhold the

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23 Because of the strength of the General Counsel’s case under *Wright Line*, we need not decide the alternate theory of whether the Employer’s action was inherently destructive of employee rights.

24 We note that the Union did not amend the charges in Region 16 to include a Section 8(a)(3) allegation until April 12, 2021, which is outside the Section 10(b) period. Nevertheless, in analyzing the facts of this case through *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988), we conclude that a Section 8(a)(3) charge allegation would be “closely related” to the timely-filed Section 8(a)(5) charge in Region 16 and, thus, not time barred under Section 10(b). This stems from the fact that there is a “causal nexus between the allegations and they are part of a chain or progression of events.” *Carney Hospital*, 350 NLRB 627, 630 (2007) (clarifying the second prong of *Redd-I*); see also *Aldworth Co.*, 338 NLRB 137, 138-39 (2002) (finding untimely Section 8(a)(5) allegation regarding unilateral implementation of employee performance measurement standard to be closely related to timely Section 8(a)(3) allegation regarding employees’ discharge), enforced sub nom., *Dunkin’ Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437 (D.C. Cir. 2004). Furthermore, the Employer is not at a disadvantage because it has been aware of the timely-filed Section 8(a)(3) charge in Region 15, and it opted not to supplement its original position statement with any other evidence or arguments.


26 See, e.g., *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991) (citing *Curtiss-Wright Corp.*, 145 NLRB 152 (1963), enforced 347 F.2d 61 (3d Cir. 1965)); see also
information by claiming it is confidential or proprietary; instead the employer has an obligation to propose an accommodation or bargain with the union over the union’s need for the information in light of the confidentiality issues.  Furthermore, “the right of the Union to the information requested must be determined by the situation which existed at the time the request was made, not at the time the Board or the courts get around to vindicating that right—otherwise, important rights under the Act would be lost simply by the passage of time and the course of litigation.”

Here, the Employer unjustifiably refused to comply with the information request the Union first made on October 1, which the Union needed to fulfill its statutory duty to negotiate over mandatory bargaining subjects. Upon learning that unit employees could no longer enjoy a twenty-year-old past practice and access the Fund’s healthcare portal via in-store computers—merely weeks before open enrollment season began—the Union naturally sought information from the Employer explaining how and why this happened. Not only would this information be helpful to the Union’s pending grievances over the unilateral change, but the information would also impact the Union’s posture at the bargaining table and, furthermore, adjust its messaging with its members so that the Employer’s actions did not successfully undercut the employees’ confidence in their collective-bargaining representative, especially at a time of ongoing bargaining. Thus, while the information’s relevance to

_Fleming Cos., 332 NLRB 1086, 1086-87 (2000) (finding employer violated Section 8(a)(5) by failing to provide union with grievant’s personnel file, work rules, other disciplinary actions taken, and a list of names and contact information for all unit employees employed by respondent’s predecessor)._  

27 See _Detroit Edison Co. v. NLRB_, 440 U.S. at 317-18; _Finch, Pruyn & Company, Inc._, 349 NLRB 270, 276 (2007) (employer failed to accommodate union’s request for contracts, including ignoring the union’s proposal to redact confidential financial terms), enforced 296 F. App’x 83 (D.C. Cir. 2008).

28 _Booth Newspapers, Inc._, 331 NLRB 296, 300 (2000) (quoting _Mary Thompson Hospital_, 296 NLRB 1245, 1250 (1989), enforced 942 F.2d 741 (7th Cir. 1991)).

29 We find that the Employer did not violate Section 8(a)(5) and (1) by not complying with the information request the Union submitted on November 5 for “communications with employees informing them of how to access the enrollment portal.” The Employer stated that it did not have any documents that would be responsive to that request, and the absence of any indication from unit employees that they received some communication on this matter from the Employer appears to corroborate that response. If either Region becomes aware of evidence to the contrary, it should contact Advice.
the Union’s statutory duties is apparent, the Employer’s primary defense—that the information sought was privileged—is opaque, undeveloped, and unpersuasive. But not only did the Employer fail to substantiate why the information sought was too sensitive to be disclosed, it also failed to satisfy its statutory obligation of offering an accommodation in accordance with Board precedent. Indeed, despite the Employer reversing course and restoring access to the in-store computers after several days or weeks, that did not negate the fact that the Employer unlawfully refused to provide the Union with the requested information at a time when some employees still did not have access to the healthcare portal on in-store computers. Equally important, because of ongoing negotiations between the parties, a key aspect of which involves disagreement over the selection of a healthcare plan, the requested information remains relevant to their bargaining relationship.

CONCLUSION

Accordingly, based on the foregoing, each Region should issue complaint, absent settlement, alleging that the Employer’s unilateral change violated Section 8(a)(5), (3), and (1), and its failure to comply with the information request the Union first made on October 1 violated Section 8(a)(5) and (1).32

/s/
R.A.B.

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30 See supra note 27. The Employer also initially replied to the Union that it did not have documents responsive to the Union’s request for any communications among the Employer’s management and information technology or information security departments regarding the blocked access. To the extent that the Employer continues to rely on this defense, each Region should be prepared to reject it. Where, as here, the surrounding circumstances create the reasonable inference that it is implausible for an employer not to have the requested information, the Board will find a Section 8(a)(5) and (1) violation despite an employer stating it does not have responsive documents. See, e.g., Queen of the Valley Medical Center, 368 NLRB No. 116, slip op. at 1-2, 26 (2019).

31 See supra note 28.

32 We note that Region 15 did not request advice on the request for information charge. Nevertheless, the Region should adhere to the conclusion provided above.