UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC

FRAZER & JONES COMPANY

Case Nos. 03–CA–274530
03–CA–276401

and

IUE-CWA, AFL-CIO, LOCAL 813000,

Alexander J. Gancayco, Esq.,
for the General Counsel.

Thomas G. Eron, Esq.; Hannah K. Redmond, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried, by
agreement of the parties, using Zoom technology on October 18, 2021.¹ IUE-CWA,
AFL–CIO, Local 81300 (the Union/Local 81300) filed charges in Cases 03–CA–274530
and 03–CA–276401 on March 23 and April 30 respectively. (GC Exhs. 1(a) to 1(aa).)²
The General Counsel issued the Order Consolidating Cases, Consolidated Complaint
and Notice of Hearing on July 23. Frazer & Jones Company (the Respondent) filed
timely answers denying all material allegations.

The consolidated complaint alleges that (1) since about January 13, to about
March 25, the Respondent unreasonably delayed in furnishing the Union with “data
showing how moving machines to different departments has led to improvement in
productivity”; (2) since about April 2, the Respondent failed and refused to furnish the
Union with “the department level data, machine level data, or supervisor reports which
the high-level amalgamation comes from; the scale by which the data comes from; the
root of formula by which the efficiency is measured; the quantitative data by which the

¹ All dates are in 2021, unless otherwise indicated.
² Abbreviations used in this decision are as follows: “Tr.” for transcript; “GC Exh.” for General
Counsel’s exhibit; “R. Exh.” for the Respondent’s exhibit; “GC Br.” for General Counsel’s brief; and “R.
Br.” for the Respondent’s brief. My findings and conclusions are based on a review and consideration of
the entire record and may include parts of the record that are not specifically cited.
percentages are calculated; and the plant output or fulfilled customer order lists, to provide the Union with the quantitative data on the production levels”; and (3) since about April 15, the Respondent has failed and refused to furnish the Union with “shot blast weekly production reports and hard iron weekly production reports going back a full year; all similar Excel sheets; and all underlying documents used to populate the Excel sheets.”

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the manufacture and nonretail sale of iron products with an office and place of business in Solvay, New York. During the calendar year preceding the filing of the unfair labor practice charge, the Respondent purchased and received goods valued in excess of $50,000 directly from points outside the state of New York. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. General Background Information

The Respondent operates a foundry in Solvay, New York, and primarily makes product for the mining market. In addition, the Respondent has diversified into supporting the rail, truck, construction, oil, and gas industries. Currently, the Respondent employs about 146 workers. Since 2017, Sadmir Brkanovic (Brkanovic) has served as the Respondent’s general manager and been employed with the Respondent for 24 years. In his role as general manager, Brkanovic is responsible for the overall operations of the foundry, including labor, sales, and strategic planning. He is also involved in contract negotiations between the Respondent and the Union, as well as for the most recent collective-bargaining agreement (CBA). Deborah Uttanwalla (Uttanwalla) is the human resources manager.

The following constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All hourly rated product and maintenance employees, sand testers and the new in-process technicians in the laboratory department of the Frazer & Jones Co., Division of The Eastern Company, at the Solvay, New York plant, excluding professional employees, all office employees and all other
laboratory employees, security guards, supervisors, and others on hourly rates who may regularly perform supervisor duties on a full or part-time basis.

Since 1985, Michael Rusinek (Rusinek) has been a union staff representative and reports to the current IUE Division President, Carl Kenebrew (Kenebrew). Rusinek’s office is in Buffalo, New York, but he is assigned to District 1 of the CWA which covers New York, New Jersey, Maryland, and New England. More specifically, Rusinek’s primary assignment is central and western New York. As the staff representative, Rusinek’s duties include participating in step 3 grievance meetings, arbitrations, and contract negotiations. He is also tasked with making requests for information (RFI) on behalf to the Union to the Respondent and is copied on all correspondence between the Union and the Respondent. During the relevant period, the Union’s chief steward was John Brunelle (Brunelle). The Union’s in-house counsel is Casey Whitten-Amadon (Amadon).

The Union entered into a CBA with Respondent that is effective from August 6, 2018, to August 5, 2023. (GC Exh. 2.) Article VI of the CBA governs seniority, layoff, and recall for the plant and lists the affected departments: Annealing, Assembly, Core Room, Finishing, Foundry (including Quality Control), Grinding, Hard Iron, Machine Shop, Maintenance, Melting, and Pattern Shop. (GC Exh. 2, p. 11.) According to Article VI, Section 1.A, seniority is determined on a department basis. (Tr. 37; GC Exh. 2.)

Article II, Section 3 of the CBA sets forth the number and assigned location of stewards within the foundry. The provision also notes,

If there is more than one shift for any department, there will be a steward on each shift for each of the department groups listed above.

Rusinek provided undisputed testimony that members within each department elect their union steward; and under the terms of the CBA, the steward has the right to stay in the department (jurisdiction) for which the steward was elected. (Tr. 34–35.)

B. Realignment of departments and subsequent grievance

In July 2020, the Respondent, through Brkanovic, unilaterally realigned certain production departments at the foundry, specifically the finishing, hard iron, and grinding departments. (GC Exh. 2 at 11; GC Exh. 3 at 5.) While the realignment moved some employees from the finishing department to the hard iron and grinding departments, it did not involve the physical movement of the equipment in those departments. Rather, the equipment was realigned under a more streamlined reporting structure to increase the capability of processing the product. The three shot blast machines were reassigned to the hard iron department which initially only had two of the machines. As

3 In its posthearing brief, the Respondent notes that the transcript erroneously refers to the “shot blast
a result, all the shot blast machines are in a “particular department” and assigned a specific number. For example, the two machines in hard iron are identified as MP14-1 and 2, and the three machines added as part of the realignment are named GM20, GM12, and MP22. After the realignment of the machines, management was able to assign each machine to every product and run one report to show the work in process on the shot blast machines, where before the realignment this was not possible.

As part of the realignment, Brkanovic placed a single manager over the newly merged department which allowed some data to be collected for the hard iron operation and shot blast machines. Prior to the realignment, not all of the equipment in the hard iron department was managed by a single manager. Brkanovic gave undisputed testimony that, “[t]wo different groups of equipment were managed by the different departments and different managers.” (Tr. 141.) Consequently, a “bottleneck” would form and negatively impact other departments in, for example, the machine shop, assembly, grinding department, and finishing tool department. Although, before October 2020, Brkanovic was able to understand what work was in process within hard iron, he was unable to do the same for the shot blast machine because the data was unreliable. Prior to the realignment, the data was inputted manually which caused inconsistencies. After the realignment, however, more reliable data was able to be collected for the hard iron department and shot blast machines. Currently, the data in the hard iron operation is collected semi-automatically. The hard iron machine was never reprogrammed or recalibrated. Data continues to be collected manually for the “front end” of the shot blast machines and it is not a complex reporting process. Finally, some machines in the foundry collect their own reports.

By memorandum dated September 2020, Brkanovic explained to employees that Respondent would soon begin using new manufacturing methods to enhance its “scheduling capabilities, production flow, quality control and on-time delivery.” (GC Exh. 3.) The memorandum also read in part,

Employees moved from the Finishing department to Hard Iron and Grinding will retain their seniority that they had while in Finishing department. This also applies in case of a lay off.

(GC Exh. 3.) According to Brkanovic, the changes described in the memorandum provided improvement in collecting data and allowed him to plan the work in progress in a timely manner to meet customer demands. Admitting that there are other steps that need to be taken to make the data more usable and valuable to management, Brkanovic noted that as of October 2020, this has not been accomplished.

machine” as the “shop glass machine.” Taking note of this correction, I will refer to the machine as the “shot blast machine” where it has been incorrectly identified in the transcript.
Due to the realignment, the Union filed a grievance, with Union Steward Russell Gillette (Gillette) as the named grievant. The grievance also alleged that bargaining unit members Igor Pechenyy (Pechenyy) and Tommy Cole (Cole) were “affected” by the Respondent’s action. (GC Exh. 3.) Consequently, on January 13, Rusinek attended a third-step grievance meeting. In addition to Rusinek, the Union was represented in the meeting by John Rizzo (Rizzo), Recording Secretary Rob Brierton (Brierton), and Chief Steward Bill Rattray (Rattray). The Respondent was represented by Uttallawa and Brkanovic. During the meeting, Rusinek explained to Uttallawa and Brkanovic the impact that the change had on bargaining unit employees. According to Rusinek, the Respondent’s merging of two departments violated the CBA because the parties had negotiated that they would be separate units. Consequently, the realignment resulted in Gillette being transferred into a unit that was not originally in the jurisdiction where he was elected steward; and the CBA gives the steward the right to maintain their jurisdiction. Gillette worked in the finishing department and served as the steward for that department. Moreover, Rusinek insisted the Respondent’s unilateral change affected bargaining members’ bidding process for jobs in the various departments. Under Article VI, Section 1.A of the CBA, seniority is determined on a departmental basis; and the Union was concerned the realignment would affect the seniority process.

Rusinek claims that Brkanovic stated productivity in the departments since the realignment and he had data to support it. Rusinek asked for copies of the data that Brkanovic relied on to support his claim about increased productivity. According to Rusinek, Brkanovic agreed to provide him with the information, and the meeting ended. Rusinek testified he wanted the data to determine if it supported Brkanovic’s assertion that the realignment increased productivity; and whether there was a solution to the impact that those changes had on bargaining unit employees. Moreover, Rusinek insists the data would be helpful to the Union in the grievance process; and it was nonsensical to proceed with the grievance until the Union could review the data. After the meeting but before he left the building, Rusinek followed up his oral request for the data with an email again requesting the information from Brkanovic. He copied all the meeting participants on the email. Rusinek also sent them a separate summary of the Union’s position on the grievance. (GC Exhs. 4, 17.) Despite, the oral and written requests made to the Respondent on January 13, Rusinek insists that he did not receive a response from the Respondent. (Tr. 45–46.) On January 18, Rusinek reiterated his information request in an electronic message (email) to Brkanovic and copied Rizzo, Brunelle, and Uttanwalla. (GC Exh. 6.) A deadline for receipt of the information was set by Rusinek for January 20. Id.

Brkanovic testimony on the January 13, step 3 grievance meeting differed from Rusinek’s version in key respects. Most significantly, Brkanovic denied telling Rusinek unequivocally that he had data to support improvement in productivity due to the realignment. During the January 13 meeting, Brkanovic stated that he discussed with the Union the business challenges and ability to meet sales with the potential to improve

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4 During this time period, Rizzo was the Union’s acting local president.
if they could “change our process or adapt to it.” He admits that he mentioned the data but insists the Union took those remarks out of context. According to Brkanovic, in the meeting he told the Union “I have a data that I’m working with that it’s not reliable or it’s consistent, that we need to improve. That we need to make sure that it’s . . . correct going forward.” (Tr. 147.) Additionally, Brkanovic testified he told the Union, “I have data that may improve and may show the information about improvement of the processes and based on the previous reporting, pervious ability . . .” (Tr. 148.)

I credit Rusinek testimony that Brkanovic stated the realignment improved productivity and he had data to support it. The Board has consistently held that credibility determinations may be supported by several factors, “including the context of witness testimony, a witness’ demeanor, the weight of respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole.” Farm Fresh Co., 361 NLRB 848, 860 (2014); Daikichi Corp., 335 NLRB 622, 623 (2001), (citing Shen Automotive, 321 NLRB 586, 589) (1996) enfd. mem. sub nom. 56 Fed. Appx. 516 (D.C. Cir. 2003. Although Rusinek and Brkanovic struggled to answer questions on cross-examination, I found Rusinek to be more forthright and credible for several reasons. First, Brunelle provided credible corroborating testimony that Rusinek asked Brkonovic what proof he had to support his statements about the affects the realignment had on the departments; and Brkonovic responded he had data. Brunelle corroborated Rusinek’s testimony that he asked Brkonovic to produce the data within. Moreover, Brunelle’s testimony was concise and consistent on both direct and cross examination. There is simply no basis for denying the veracity of Brunelle’s testimony. Second, the Respondent did not provide any corroborating testimony that Brkonovic did not make the statement attributed to him. Unlike Brunelle who corroborated Rusinek’s testimony about Brkonovic, the Respondent did not have Uttanwalla, who also attended the January 13 meeting, give corroborating testimony for Brkonovic. Third, Brkonovic admitted to making statements in the meeting about the data and “potential to improve” if they changed their process. (Tr. 146.) Although Brkonovic denied making the exact statement attributed to him by Rusinek, he acknowledged stating, “I have data that may improve and may show the information about improvement of the processes and based on the previous reporting, previous ability . . .” (Tr. 148.) In Brkonovic’s email to Rusinek, he also noted that he “realigned the department assignment of equipment to improve the flow and allows for better tracking of the product as it moves through the manufacturing cycle.” (R. Exh. 6; GC Exh. 9.) Even assuming as true Brkonovic’s testimony on this point, he admittedly put the data at issue. Moreover, it was not unreasonable for Rusinek to interpret Brkonovic’s statements as an acknowledgment that the realignment resulted in some improvements and the data he had collected, albeit restricted, supported those improvements.

In response to the January 18, renewed RFI, on January 28, Brknaovic sent his answer with attachments of samples of the work in process (WIP) reports from the 2021 and the hard iron weekly report. (Tr. 148; GC Exh. 6.) He also explained in the email to Rusinek the information he was providing but denies that Rusinek or any member of the Union’s local committee asked him to explain the attachments. The reports he attached list the processing and efficacy rates for various machines. Included in the attachment
are a few blank pages that occurred because there was no data to report from the Odyssey software program that collects the date. There were other blank pages included, however, for which he could not explain. (Tr. 149–151.) Brkanovic acknowledges the data provided to the Union on January 28, was not complete but rather are samples of the requested forms and data which “represent the collection data that the company now maintains as was referred to in the January 13 grievance meeting.” (Tr. 151–152; GC Exh. 19; R. Exh. 10.)

On January 29, Brunelle sent an email to Brkanovic and Rusinek, among other recipients, that the Union was elevating the grievance to arbitration because the parties had been unable to resolve it. (R. Exh. 6.) He also sent another email the same date disputing claims Brkonovic made in his January 28, answer describing the Respondent’s actions and his recollection of the statements made in the January 13 meeting with the Union. (GC Exh. 20.)

On February 17, Brkanovic answered Rusinek’s January 28 email by clarifying the documents he attached in his response to the Union’s January 18 email. Brkanovic wrote, in part,

. . . I am confirming to you that the documents included with the January 28 email are samples of all of the report forms and data that the company maintains responsive to the union’s information request. Obviously, there are different data from the various departments each week, but these reports represent the collection of data that the company now maintains as was referred to in the January 13th grievance meeting.

(GC Exh. 9.) Rusinek responded a few hours later in an email insisting that in the January 13 grievance meeting, Brkanovic stated the realignment increased productivity and there was data to substantiate it. Id. On February 25, Rusinek emailed Brkanovic again requesting the information and noting that he needed it “to be able to investigate the grievance regarding the combination of departments properly . . .” (GC Exh. 8.) Brkanovic followed-up with an email response reiterating that the realignment of equipment into various departments improved the Respondent’s ability to track product and before the change “we could not track work-in-process reliably, so there is no comparable production data prior to the realignment.” (GC Exh. 9.) Less than an hour later, Rusinek answered Brkanovic’s email. In his response, Rusinek repeated his belief that Brkanovic said he had data to show productivity improvement; and the Union needed the information so it could “effectively make decisions related to how to process the grievance moving forward.” Id.

By email dated March 2, Rusinek clarified the Union’s initial RFI and wrote in part,

The Union never asked for apples to apples comparisons. Simply send us ANY production data that you have either regarding material needed and used before and after, data related to customer orders, before and after.
Again ANY production data you have. We can then sort out and get a clear picture of what difference was enjoyed or not as a result of the combination.

(GC Exh. 10.) In response to the Union’s renewed request, on March 25, Brkanovic emailed Rusinek the hard iron and shot blast efficiency production data for the period January 1, 2020, through March 23, 2021. (GC Exh. 11.)

D. Union’s RFI: April 2 and 15

On April 2, Casey Whitten-Amadon (Amadon), counsel for the Union, replied to Brkanovic’s March 25 email. She complained that the data was at best “high level” and asked for a more granular report. Specifically, Amadon requested,

1) Please provide the department level data, machine level data, or supervisor reports which the high level amalgamation comes from.

2) Additionally, please provide the scale by which the data comes from, it appears to be “efficiency” percentage. What is the root or formula by which the efficiency is measured? Where is the quantitative data by which the percentage is calculated?

3) Finally, the plant “output” or fulfilled customer order lists so as to provide us with the quantitative data on the production levels.

(GC Exh. 12.) Since Amadon did not receive a response to her email, on April 14, she again emailed Brkanovic asking for an update on her request. (GC Exh. 13.) The Respondent’s attorney, Thomas G. Eron (Eron), answered her the same day noting “I understood that a call is scheduled for tomorrow to review.” Id. Amadon wrote back,

Ok, we can talk tomorrow. Obviously, some of these requests cannot be fulfilled with talking alone. I asked for quantitative production reports and customer orders.

(GC Exh. 13.) Pursuant to an email sent on April 15, Amadon thanked Brkanovic for the reports he sent on March 25 but noted the Union needs those reports “going back 1 year” and the underlying documents used to complete the reports in the excel sheets format. Amadon also requested,

Please provide all underlying documents which you use to fill out the excel sheets.

This is in addition to the information request already sent.

(GC Exh. 14.) Respondent did not respond to the email. Consequently, on April 27, Amadon, via email, reiterated the Union’s need for the information; and threatened to
file “a charge by the end of the week” unless Respondent provided it. (GC Exh. 15.) There is no evidence that Respondent answered or acknowledged Amadon’s final request.

III. DISCUSSION AND ANALYSIS

A. LEGAL STANDARDS

Section 8(a) (5) of the Act mandates that an employer must provide a union with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. NLRB v. Truitt Mfg. Co. 351 U.S. 149, 153 (1956); E.I. du Pont de Nemours and Co., 366 NLRB No. 178 slip op. at 4 (2018); Detroit Edison Co. v. NLRB, 440 U.S. 301, 303 (1979). “... [T]he duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.” NLRB v. Acme Industrial Co., 385 U.S. 432, 436 (1967). Information requests regarding bargaining unit employees’ wages, hours, and terms and conditions of employment are “presumptively relevant” and must be provided unless the employer gives a valid reason for not complying. Whitesell Corp., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), enf’d. 638 F.3d 883 (8th Cir. 2011); Southern California Gas Co., 344 NLRB 231, 235 (2005); CVS Albany, LLC, 364 NLRB No. 122, slip op. at 2 (2016). If the requested information is not directly related to the bargaining unit or involves employees outside of the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. Disneyland Park, 350 NLRB 1256, 1257 (2007); Earthgrains Co., 349 NLRB 389 (2007); United States Testing, 324 NLRB 854, 859 (1997), enf’d. 160 F.3d 14 (D.C. Cir. 1998).

The standard for establishing relevancy is the liberal, “discovery-type standard.” Alcan Rolled Products, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities. In Leland Stanford Junior University, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as follows:

[T]he Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. United Technologies Corp., 274 NLRB 504 (1985); TRW, Inc., 202 NLRB 729, 731 (1973).

The requested information does not have to be dispositive of the issue for which it is sought, but only has to have some relation to it. Pennsylvania Power & Light Co., 301 NLRB 1104, 1104–1105 (1991). The Board has also held that a union may make a request for information in writing or orally. Further, if an employer fails to respond timely
to a request for information, the union does not need to repeat the request; and a delay is unreasonable when the information requested is easily and readily accessible from an employer’s files. *Bundy Corp.*, 292 NLRB 671, 672 (1989).

B. From January 13 to March 25, Respondent unreasonably delayed providing RFI

The General Counsel, and the Union, contend the information is relevant and necessary to determine whether the unilateral change made by the Respondent would negatively impact bargaining unit members seniority status; what the impact, if any, it would have on the union stewards’ jurisdictional representation; and if the Union should process a grievance over the issue. First, the General Counsel argues that the RFI is presumptively relevant because the Respondent, through Brkanovic, put the information at issue by “taking the position that the Union should withdraw or settle the grievance because [Brkanovic’s] changes were improving productivity.” (GC. Br. 19.) The General Counsel notes that “the Board has always found the relevancy of any information, including productivity data, may be conclusively established by statements made by the non-requesting party during collective bargaining.” (GC Br. 18.) Second, Rusinek contends that the unilateral realignment of the departments forced several of the union stewards out of the “jurisdiction” where they had been elected by members to serve. (Tr. 34–35.) Last, according to Rusinek, it was fruitless to proceed with the grievance filed on behalf of the three employees until he reviewed the RFI to determine if the grievance could be resolved or whether there were grounds to continue processing it. (Tr. 40–41.)

The Respondent, however, denies that Brkanovic made the statement attributed to him by Rusinek. Furthermore, the Respondent counters that it does not have an obligation to produce the information because it has “no bearing on bargaining unit employees’ wages, hours, or other terms and conditions of employment.” (R. Br. 10.) Therefore, according to the Respondent, the RFI is for information that is not presumptively relevant so the Union “must offer more than mere suspicion for it to be entitled to the information” but has failed. (R. Br. 10 quoting *Sheraton Hartford Hotel*, 289 NLRB 463, 463–464 (1988).) Moreover, the Respondent notes that it informed the Union that the realignment would have no effect on employees’ seniority status and offered to sign a memorandum of understanding (MOU) noting the same. (GC Exh. 3.) Last, the Respondent contends that it made a good faith effort to provide and explain to the Union the requested information.

I have found credible Rusinek’s testimony that in the June 13, meeting Brkanovic told the Union that the realignment of equipment between departments increased productivity; and he had data to substantiate his claim. Brunelle corroborated Rusinek’s

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5 In support of her argument, counsel for the General Counsel cites *Leland Sandford Junior University*, supra, 262 NLRB at 145; *Tubari Ltd.*, 299 NLRB 1223, 1229 (1990) (same); *Paccar, Inc.*, 357 NLRB 47, 47 (2011); *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159–1160 (2006); *Allison Corp.*, 330 NLRB 1363, 1367 (2000).

version that Brkanovic made the statement. Consequently, the requested information is presumptively relevant because the Respondent put it at issue. *Leland Stanford Junior University*, supra, 262 NLRB at 145 (finding that the employer must provide the Union with current job classifications to allow it to evaluate the employer’s claims about distinctions between the job duties of life science technicians versus assistants); *Mobil Exploration & Production*, 295 NLRB 1179, 1180–1181 (1989) (finding that the employer must provide comparative wage survey data to support its claim that a particular job classification was over-competitive and unnecessary); *General Electric Co.*, 192 NLRB 68, 68–69 (1971), enf’d 466 F.2d 1177, 1184 (6th Cir. 1972) (finding that the employer must release correlated wage data to support the claim that its wage proposal was “proper” in view of local wage standards).

Rusinek also gave undisputed testimony that the realignment caused union stewards to represent members in areas where the bargaining unit members did not elect them to serve in contravention of Article II, Section 3 of the CBA. (GC Exh. 2.) Moreover, I find that this impacts the Union’s performance of its statutory obligations; and therefore, the RFI is presumptively relevant.

I also find that the RFI is necessary and relevant to the Union’s representational role of processing grievances and arbitrations and ensuring compliance of existing CBAs. *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1351 (2010) (finding that information related to the discipline of unit employees was presumptively relevant because the Union needed it to properly process its grievances to arbitration); *United Technologies Corp.*, at 506 (finding that the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances); *Live Oak Skilled Care & Manor*, 300 NLRB 1040, 1049 (1990) (finding the employer was in violation of the Act by refusing to provide information shown to be necessary for the Union to determine whether or not the employer was in compliance with its agreement). The law dictates that the Union is entitled to the information at issue to determine if it is prudent and appropriate to file a grievance and process it through to arbitration. *Ohio Power*, 216 NLRB 987 (1975); *Leland Stanford Junior University*, supra. While the CBA describes the grievance procedure in terms of an employee’s right to file, the union is empowered by the Act with enforcing the Respondent’s obligations under the CBA through the grievance process or any other legal means. *United Graphics, Inc.*, 281 NLRB 463, 465 (1986) (the Board held that information presumptively relevant to the union’s role as bargaining agent must be provided to the union as it “relates directly to the policing of contract terms.”). This is a legitimate function of the Union; and the requested information is necessary for it to fulfill that duty. *United Technologies Corp.*, 274 NLRB 504 (1985); *TRW, Inc.*, 202 NLRB 729, 731(1973). I find that the information requested in this matter is relevant and necessary because it enables the Union to decide whether to file a grievance on behalf of not only Gillette, Pecheny, and Cole, but other unit employees who might have unknowingly been the victim of discriminatory action.

The requested information is also relevant because it could shed light on whether the realignment has or would negatively impact some of the bargaining unit members seniority within the realigned departments. Article VI of the CBA governs employee
seniority and its relationship to assignments, vacancies, transfers, layoffs, and recalls. (GC Exh. 2.) Rusinek gave undisputed testimony that the CBA provides for “bidding internally” for vacancies within departments. (Tr. 35.) He noted that unit members in the department where there is a vacancy are given first opportunity, based on seniority, to bid for the position. According to Rusinek, however, the newly merged departments have the potential to “bump” the person originally assigned to the department from getting a vacancy because he or she could be usurped by a unit member with more seniority who is now part of the realigned department. (Tr. 35) Although Uttanwalla wrote in a statement that the Union was told “the employees affected by the change will not lose their seniority”, the Union, as the exclusive collective-bargaining unit representative, is entitled to the data so it can substantiate Uttanwalla’s unsupported assertion. (GC Exh. 3.) The Board has consistently held that the Union is entitled to request relevant information to support an employer’s assertion. Wings Co., Inc., 263 NLRB 152, 156 (1982) (holding that the employer must provide wage survey data to the Union to substantiate its claim that “remaining competitive” was the reason it could only grant minimal wage increases to certain employees); Kendall Co., 196 NLRB 588, 589 (1972) (holding that the Union was entitled to collect information in relation to “overload” grievances fueled by workload changes, and in response to employer’s claim that the conditions were determined by an objective job-study system); Tennessee Chair Co., Inc., 126 NLRB 1357, 1364 (1960) (holding that the employer was in violation of the Act by refusing to provide the Union, upon its request, any record information of data or other probative material to substantiate its claim of inability to pay any wage increase). I find that the Union and bargaining members have a direct and immediate interest in a management decision that merges departments, and hence may alter the seniority status of employees. Western Massachusetts Electric Co., 234 NLRB 118, 119 (1978) (information employer used to restructure meter readers’ routes is presumptively relevant because there is a “significant and substantial relationship” between the employer’s use of the information and its effect on unit employees’ terms and conditions of employment).

Further, Rusinek gave undisputed testimony that because of the merged departments the transfer provision under the CBA has been unilaterally eliminated by the Respondent. (Tr. 36.) The Respondent did not provide substantive evidence to contradict this point. As a result of its elimination, the Union is entitled to information relevant for determining how this change impacts bargaining unit members wages and, or terms and conditions of employment.

The Respondent also contends that since the realignment of equipment was not subject to collective bargaining, the Union is not entitled to the information. (R. Br. 13.) However, Rusinek gave uncontradicted testimony that the Respondent, as part of the most recent CBA negotiations, asked to allow for the realignment of departments but later withdrew the request. This indicates that the Respondent at some point viewed the realignment of equipment as a matter that required collective bargaining.

Accordingly, I find the Respondent unreasonably delayed in furnishing the union with the information requested as described in paragraph 7(a) of the complaint in violation of Section 8(a)(1) and (5) of the Act.
C. Since about April 2 & 15, Respondent Failed and Refused to Provide RFI

As previously noted, the Union, through its counsel Amadon, requested a series of reports and data on April 2, with a follow-up request April 15. (GC Exh. 14.) The General Counsel argues the items are relevant and necessary because the information “directly flow” from Brkonovic’s assertion that productivity increased; and the information would help the Union understand the data and “where it came from.” (GC Br. 24.) In addition to its previously stated defenses, the Respondent further argues that it made a good faith effort to provide the information even though it was not statutorily obligated to do so. In support of its argument, the Respondent notes the steps it took to comply with the Union’s RFI when on January 28, March 25, and April 15, the Respondent submitted data to the Union; and on April 15, Brkonovic held a meeting with Rusinek to “explain what the data represented.” (R. Br. 14.)

It is undisputed that in response to the Union’s initial RFI, on January 28, the Respondent gave the Union Excel spreadsheets of shot blast production summaries for 3 weeks in January. (GC Exh. 6.) In the email to Brkanovic explains to Rusinek that the attached spreadsheets are samples of the work in process reporting the Respondent has undertaken since realigning the equipment. Id. I find, however, that the documents were not fully responsive to the Union’s RFI because: (1) the Respondent admits it provided only a “sample” of the reports; (2) the Union requested, but did not receive, the production numbers before the realignment to compare with those after the realignment; and (3) the Respondent did not send copies of the requested documents in a format understandable to the Union.

It was not until March 25, that the Respondent submitted the hard iron and shot blast efficiency production data for January 1, 2020, through March 23. However, it was still not in a form that the Union could understand. Therefore, in response to the Union’s complaints about the indecipherability of the data, on April 15, Brkanovic held a meeting with himself and several local union officials, including Rusinek, to explain it. (Tr. 156, 162.) During the short meeting, Brknaovic explained to the Union: (1) the documents provided on January 28 were only a sampling of the data; (2) the process for collecting the data; and (3) he did not use the documents’ data for production planning, rate employee performance, discipline employees, or determine employee pay. (Tr. 156–161.) While the Respondent did attempt, in the April 15 meeting, to explain the information to the Union, it made no effort to comply with the Union’s RFI dated April 2 and 15. In response to the Amadon’s April 2 RFI, Eron, the Respondent’s counsel, told

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7 While Rusinek testified that he did not receive this information, the record shows that the Respondent informed him that prior to the realignment it was unable to track work in process reliably. According to Brkonovic, there was no comparable production data prior to this point. (R. 10; Tr. 107.) Based on Brkonovic’s testimony and February 25 email to Rusinek, he implies that production was tracked prior to this point but the tracking system was inaccurate and unreliable. Consequently, the data prior to the realignment was not “comparable” to the current reports because the tracking process is now more reliable and accurate. Id.

8 Rusinek testified that he did not recall the meeting.
her there was a call scheduled for the next day to discuss it, but she noted in her reply to him that complete fulfillment of the RFI could not be handled with a conversation. (GC Exh. 13.) Since the Respondent did not fully satisfy the April 2 request, on April 15, Amadon reiterated her request and asked for additional information. The record established that the Respondent never responded.

The RFIs dated April 2 and 15 are relevant and necessary to the Union’s ability to perform its representational duties. Moreover, the Respondent does not specifically dispute the relevance of those requests. (See R. Br.) The reasons the Union needed the information is the same or similar to the reasons it initially requested information on January 28. The information requested by the Union on April 2 also arose from the assertion Rusinek placed at issue in the January 13 meeting, that the realignment had increased productivity. Consequently, the Union has the right to review the requested information to determine if Rusinek’s statement is supported by the data. Leland Stanford Junior University at 145; Mobil Exploration & Production at 1180–1181; General Electric Co., at 68–69. As previously discussed in this decision, the information could also reveal whether the realignment has or will negatively impact the seniority of unit members or the jurisdiction of union stewards.

Accordingly, I find the Respondent’s refusal to provide the requested information as described in paragraph 8(a) of the complaint violates Section 8(a)(1) and (5) of the Act.

D. Consolidated Complaint Lawful

On January 20, 2021, President Joseph R. Biden relieved the General Counsel Peter Robb of his position. On January 25, 2021, President Biden designated Peter Sung Ohr Acting General Counsel, a role he served in until July 21, 2021. On July 22, 2021, Jennifer A. Abruzzo was sworn in as General Counsel of the NLRB. The Respondent in its answer to the complaint, seventh defense argues that Peter Robb was unlawfully terminated by the President without cause. Therefore, the appointment of Peter Sung Ohr to serve as Acting General Counsel was likewise unlawful and actions taken by him, including issuing complaints, lacked legal authority. (R. Br. 19.)

I reject the Respondent’s argument. First, the complaint was issued on July 23, 2021, which is a day after Jennifer A. Abruzzo was lawfully appointed. Consequently, the complaint was lawfully issued. Moreover, the Supreme Court recently held that “statutory silence on the question of removability indicates Congressional intent to follow the default rule that officers serve at the pleasure of the person or body appointing them.” Collins v. Yellen, 141 S. Ct. 1761 (June 23, 2021) The Board has also noted that the Supreme Court in Collins “foreclosed any reasonable argument that the President lacked authority to remove General Counsel Robb . . .” Park Central Care & Rehabilitation Center, 371 NLRB No. 46, slip op. at 1–2 (December 30, 2021); National Assn. of Broadcast Employees and Technicians—The Broadcasting and Cable

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9 I will refer to actions taken by the three officials (Peter Robb, Peter Sung Ohr, and Jennifer A. Abruzzo) as “the General Counsel.”
Accordingly, I find the complaint was lawfully issued pursuant to Section 3(d) and 10(b) of the Act.

CONCLUSIONS OF LAW


2. The IUE–CWA, AFL–CIO, Local 813000 is a labor organization within the meaning of Section 2(5) of the Act.

3. By its unreasonable delay in providing the necessary and relevant information requested by the Union in writing since from about January 13, 2021, to March 25, 2021, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

4. By its failure and refusal in providing the necessary and relevant information requested by the Union in writing since about April 2, 2021, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

5. By its failure and refusal in providing the necessary and relevant information requested by the Union in writing since about April 15, 2021, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.

6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondent has not violated the Act except as set forth above.

REMEDY

Having found that 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.

Respondent will be ordered to produce the requested and relevant information, and post and communicate by electronic post to employees the attached Appendix and notice.
On these findings of fact and conclusions of law and on the entire record, I issue the following recommended\textsuperscript{10}

ORDER

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The Respondent, Frazer & Jones Company, in Solvay, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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(a) Refusing to bargain collectively with IUE–CWA, AFL–CIO, Local 813000 (Union) by failing and refusing to and, or unreasonably delaying in providing the Union, information requested that is necessary and relevant to its role as the exclusive representative of the employees in following unit:

All hourly rated product and maintenance employees, sand testers and the new in-process technicians in the laboratory department of the Frazer & Jones Co., Division of The Eastern Company, at the Solvay, New York plant, excluding professional employees, all office employees and all other laboratory employees, security guards, supervisors, and others on hourly rates who may regularly perform supervisor duties on a full or part-time basis.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) Within 14 days from the date of the Board’s Order, furnish the Union with all information it has requested since on or about April 2 and 15, 2021.

(b) Within 14 days after service by the Region, post at its Solvay, New York facility copies of the attached notice marked “Appendix.”\textsuperscript{11} Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email,

\textsuperscript{10} 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.

\textsuperscript{11} 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.”
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 January 13, 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: July 5, 2022

Christine E. Dibble (CED)
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 DO ANYTHING TO PREVENT YOU FROM EXERCISING THE ABOVE RIGHTS

WE WILL NOT refuse to bargain collectively and in good faith with the IUE–CWA, AFL–CIO, Local 81300 (Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union’s performance of its duties as the collective-bargaining representative of our unit employees at our Solvay, New York facility.

WE WILL NOT refuse to bargain collectively and in good faith with the IUE-CWA, AFL–CIO, Local 81300 (Union) by an unreasonable delay in furnishing it with requested information in a timely manner that is relevant and necessary to the Union’s performance of its duties as the collective-bargaining representative of our unit employees at our Solvay, New York facility.

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the servicing representative of the exclusive collective-bargaining representative of our employees in the Unit at our Solvay, New York facility.

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

WE WILL provide the Union with the information it requested in writing on April 2 and 15, 2021

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FRAZER & JONES COMPANY
(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 3
Niagara Center Building
130 South Elmwood Avenue, Suite 630
Buffalo, New York 14202
Telephone: (716) 551-4931
Fax: (716) 551-4972
Hours of Operation: 8:30 a.m. to 5:00 p.m. ET
Hearing impaired callers should contact the Federal Relay Service by visiting its website
at www.federalrelay.us/tty

The Administrative Law Judge’s decision can be found at www.nlrb.gov/case/03-CA-274530 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, (313) 226-3200.