ELEANOR LAWS, Administrative Law Judge. This case was tried based on a joint motion and stipulation of facts I approved on May 2, 2022. The International Brotherhood of Electrical Workers Local 89 (the Union) filed the change on July 9, 2021, and the General Counsel issued the complaint on October 29, 2021. DirecTV (the Respondent) filed a timely answer denying all material allegations.

The complaint alleges the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to provide relevant requested information to the Union.

On the entire record, 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 foreign limited liability company with offices and businesses in Washington State, provides broadcast satellite television services. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7)
of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

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The Union represents the following unit of employees for purposes of collective bargaining:

All full-time and regular part-time administrative support assistants, office coordinators, premises technicians, and warehouse assistants working in Washington State.

The Respondent has recognized the Union as the exclusive bargaining representative of this bargaining unit since 2016, with the most recent collective-bargaining agreement (CBA) effective from August 25, 2019, through August 26, 2023. (Jt. Exh. 5.)

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Article 4.1 of the CBA states:

The Company and the Union recognize that it is in the best interests of both Parties, the employees and the public that all dealings between them be, and continue to be, characterized by mutual responsibility and respect. To insure that this relationship continues and improves, the Company and the Union, and their respective representatives at all levels, shall apply the terms of this Agreement fairly, in accord with its intent and meaning and consistent with the Union’s status as exclusive bargaining representative of all employees in the Unit. Each party shall bring to the attention of all employees in the Unit, including new hires, that their purpose is to conduct themselves in a spirit of responsibility and respect for the measures they have agreed upon to insure adherence to this purpose. Nothing in this Article is subject to the arbitration procedures of this Agreement.

(Id.)

Article 6.1 of the CBA states:

Except as specifically limited by provisions of this Agreement, the Company reserves and retains, solely and exclusively, and without recourse to negotiations, all rights, powers, and authority, to operate its business, which include the right to establish, modify and enforce personnel policies, work rules, and regulations and standards for employee performance, including attendance policies, safety policies and disciplinary policies; as well as the right to make and enter into decisions to do any of the foregoing provided, however, that these rights shall not be exercised in violation of any of the other terms and provisions of this Agreement.

(Id.)

1 Abbreviations used in this decision are as follows: “Jt. Exh.” for joint exhibit and “Jt. Stip.” for joint stipulation. Though I have cited to various portions of the record, my decision is based on the entirety of the evidence.
Article 16.14 of the CBA provides:

It is the Company’s objective to consider carefully the interests of both the customer and employee along with all other considerations essential to the management of the business in a highly competitive and dynamic environment. While the Company believes it is in its best interests to utilize its own employees, the Company may use contractors as it deems necessary in order to respond to a highly unpredictable marketplace. For various reasons where the needs of the business require the Company may subcontract bargaining unit work, provided that it will not currently and directly cause layoffs of Regular Employees covered by this Agreement.

(Id.) The Respondent had utilized contractors pursuant to this provision prior to 2020. (Jt. Stip. ¶ 17.) The use of contractors impacts the working conditions of Unit employees if it causes a reduction in available work or leads to a reduction in workforce. (Jt. Stip. ¶ 18.)

On July 16, 2020, the Respondent issued a letter to its bargaining-unit Premises Technicians offering a $5,000 bonus if they volunteered for layoff. The letter states “[t]he organization will provide an opportunity for DirecTV IBEW Premises Technicians who are not currently in a surplus status to leave the Company with the layoff allowance in accordance with Article 19.4 of the DirecTV IBEW Bargaining Agreement with AT&T.” (Jt. Exh. 6.) Pursuant to the letter, employees who volunteered for layoff would only receive the one-time payment of $5,000 if they were approved for layoff by the company. (Jt. Exh. 7.) The Respondent targeted 92 layoffs through the bonus program across 10 offices in the State of Washington. Sixty-two employees volunteered for layoff, and 61 were approved for layoff. (Jt. Exh. 8.)

On June 7, 2021, after learning from members that the Respondent was using contractors to perform bargaining-unit work, Justin Roberts (Roberts), assistant business manager for the Union, sent Shane Rutledge (Rutledge), the Respondent’s area manager, network services, the following request for information:

RE: The Union is investigating a potential grievance and requests the following information.

Dear Shane,

The Union requests the following information:

1. A list of all DIRECTV/AT&T work orders completed by contractors in the State of Washington from January 1st, 2021 to present. This list need not include customer sensitive information but should by some method indicate individual number of work orders performed by each contracted employee and date performed.

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2 Article 19.4 details the layoff allowance based on seniority and base weekly wage rate in effect at the time of the layoff. (Jt. Exh. 5.)
3 Rutledge is an admitted statutory supervisor. (Jt. Stip. ¶ 10.)

3. All communications related to scheduling or assignment of work to contractors performing DIRECTV/AT&T work in the State of Washington in 2021.

4. Timecards records for all W2 DIRECTV/AT&T employees performing work in the State of Washington from January 1st, 2021 to present. These records shall include time codes used and the amount of hours used in each time code.

(Jt. Exh. 9.)

On June 14, Rutledge responded. He furnished only the information requested in paragraph 4 of the request. In response to the requests in paragraph’s 1–3, Rutledge stated, for each request:

The Company objects to the relevance of the request. The Collective Bargaining agreement gives the Company broad discretion to use contractors so long as the use of contractors does not currently or directly cause a layoff. As there has not been a layoff in the history of the bargaining unit, the Company’s use of contactors (sic) is irrelevant to the Union’s duties. Also, the information regarding the Company’s contractor operations is confidential and not presumed relevant under the law.4

(Jt. Exh. 10.)

Roberts reiterated the Union’s request on June 14, explaining why he requested the information. He stated, in relevant part:

The usage of contractors and information regarding contractors is necessary not only to investigate a potential violation of the collective bargaining agreement including the language you cited but also to ensure compliance with other terms and conditions of the collective bargaining agreement.

You state “there has not been a layoff in the history of the bargaining unit”, this statement is blatantly false however does not negate the Company’s duty to respond to a reasonable request for information. While the Company may consider contractor information confidential this also does not negate the obligation to respond to the request.

4 The Respondent did not argue confidentiality as a defense in closing brief and did not assert it as a defense in the answer, so this defense is not considered. In any event, the party asserting confidentiality has the burden of proving that such interests exist and that they outweigh its bargaining partner's need for the information. See Jacksonville Area Assn. for Retarded Citizens, 316 NLRB 338, 340 (1995). Further, a party refusing to supply information on confidentiality grounds has a duty to seek an accommodation. Pennsylvania Power Co., 301 NLRB 1104, 1105 (1991). Here, the burden was not met and no accommodation was offered. The Respondent raised several other affirmative defenses in its answer, but provided no evidence or argument to support them and they are therefore not discussed herein.
On June 25, Rutledge reasserted the Respondent’s position refusing to provide the requested information, said he would “entertain any explanation of relevance,” and stated he was interested in an explanation as to why Roberts believed the statement regarding no history of layoffs was “blatantly false.” (Jt. Exh. 12.) Roberts responded the same day with the following:

It has come to our attention the Company may be utilizing contractors in areas where offloads are being performed. The Union believes this action to be a temporary layoff. Additionally, in July 2020 the Company sent a letter asking for employees to accept a layoff. While this was a voluntary offer, in the Company’s own words it was a layoff. According to my records 61 employees were laid off as a result of this.

The Union has jurisdictional rights to DIRECTV work in the State of Washington. By executing a layoff then hiring contractors the Company is eroding the integrity of the collective bargaining agreement and potentially in violation of Articles 1, 4, 6, 16, 19 and any other provisions which may apply. The Union has an obligation to investigate potential violations of the collective bargaining agreement and in this case that investigation involves obtaining information pertaining to work being performed by contracted employees.

In this same correspondence, Roberts again reiterated the June 7 request for information. The heading of Roberts’ June 25 correspondence states, “Request for Information for a possible grievance.” (Id.)

On June 29, having received no response to the outstanding request for information the Union filed grievance #4-DTV-2021- (Utilizing Contractors following a Lay-off-All Employees reporting to Colin Douglas). The Grievance asserts the following:

In June 2021, the Union became aware of the Company utilizing contracted employees to perform DIRECTV work in the Seattle metropolitan area. The Union alleges the Company is in violation of Articles: 4.01, 6.01, 16.14, 19.5 and any other provisions of the agreement which may apply, any Human Resources policy or practice which may apply, and any other State or Federal Law which may apply.

Attachment A to the grievance reiterates the request for information, prefaced with the following:

The attached grievance is associated with an information request dated June 7th, 2021, addressed to Shane Rutledge and provided below. To date, the Company has refused to provide information to the Union to properly investigate a possible grievance. In order to preserve the time line required by the Collective Bargaining Agreement this grievance is being sent to the Company. However, the Union cannot complete investigating the circumstances surrounding the grievance until the requested information is provided in accordance with Article 13.15 (A).
Since the Union’s initial June 7, 2021 request, the Respondent has not provided the requested information and the grievance remains unresolved.

III. DECISION AND ANALYSIS

A. Legal Framework

Section 8(a)(5) of the Act states, “It shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees. . . ” Part of the obligation to bargain is that both sides must furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty is statutory and exists regardless of whether there is a collective-bargaining agreement between the parties. *American Standard*, 203 NLRB 1132 (1973). The employer’s duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees’ bargaining agent. Like a flat refusal to bargain, “[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union’s task of representing its constituency is a per se violation of the Act” without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

In determining possible relevance of requested information, the National Labor Relations Board (the Board) does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002).

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed “so intrinsic to the core of the employer-employee relationship” so as to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees’ collective-bargaining representatives unless the employer establishes a legitimate affirmative defense to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000). “If an employer effectively rebuts the presumption of relevance, however, or otherwise shows that it has a valid reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested.” *United Parcel Service of America*, 362 NLRB 160, 162 (2015).

When the union requests information about nonunit employees, it has the burden of establishing the relevance of the requested information to its representational duties. *Richmond Health Care*, 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc.*, 318 NLRB 318 (1995), enf'd. 108 F. 3d 1182 (9th Cir. 1997). “To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances.” *Disneyland Park*, above, at 1258; citing *Allison Corp.*, 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018–1019 (1979), enf'd. in relevant part 615 F.2d 1100 (5th Cir. 1980).
The burden of establishing relevance is not heavy as the Board applies a liberal, discovery type of standard. *NLRB v. Acme Industrial Co.*, 385 U.S. at 437; *DirectSat USA, LLC*, 366 NLRB No. 40, slip op. 1, fn. 2 (2018). This burden is satisfied when the union demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant. *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002). The union must only show that the requested information has some bearing on the matter in dispute, and it will be of potential or probable use to carrying out its representational duties. See *PAE Aviation & Technical Services LLC*, 366 NLRB No. 95, slip op. at 3 (2018); *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014).

If the requested information is related to a grievance or other dispute, the union must show that the requested information has some bearing on the matter in dispute, and it will be of potential or probable use to carrying out its representational duties. See *PAE Aviation & Technical Services LLC*, 366 NLRB No. 95, slip op. at 3 (2018); *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014). It does not need to show that the information, if given, would aid the requesting party in advocating its grievance. *Schrock Cabinet Co.*, 339 NLRB 182, 188 (2003). Instead, requested information may be relevant for the purpose of giving that party information which would dissuade it from wasting its time and money in going forward with a grievance that would not be successful. Id.; citing *Acme Industrial Co.*, 385 U.S. at 437.

B. Analysis

The outstanding request at issue asks for:

1. A list of all DIRECTV/AT&T work orders completed by contractors in the State of Washington from January 1st, 2021 to present. This list need not include customer sensitive information but should by some method indicate individual number of work orders performed by each contracted employee and date performed.


3. All communications related to scheduling or assignment of work to contractors performing DIRECTV/AT&T work in the State of Washington in 2021.

As this information does not directly concern bargaining-unit employees and their working conditions, the General Counsel must establish relevance. For the following reasons, I find the General Counsel has met this burden.

The use of contractors impacts the working conditions of bargaining-unit employees if it causes a reduction in available work or leads to a reduction in workforce. If it is undisputed that

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5 Jt. Stip. ¶ 18.
the Respondent offered a monetary incentive for voluntary layoffs in July 2020, resulting in the voluntary layoff of 61 bargaining-unit members. As of June 25, 2021, Rogers had explained that the Union was investigating a possible grievance regarding the use of contractors in June 2021, to perform work previously done by bargaining-unit members, and also that it considered the use of contractors was potentially a temporary layoff of current bargaining-unit employees from that work. Given this explanation, it is easy to connect the dots between the request and the potential grievance.

The Respondent points to the fact that the request for information was not until 2021, but the layoffs were in 2020. More specifically, the Respondent argues that the mere fact that contractors may have been used in areas where offloads were being permitted is not a violation of the CBA unless employees were laid off as a result. The Respondent focuses on language in Article 16.14 permitting the subcontracting of bargaining-unit work if it “will not currently and directly cause layoffs of Regular Employees covered by this Agreement.” While this is a correct recitation of that portion of Article 16.14, the Union’s grievance, and its attendant concerns about: (1) the erosion of the bargaining unit based on the 2020 targeted layoffs; and (2) the potential contemporaneous reduction of available work to the bargaining-unit members as a result of the subcontracting, is broader.

In its request for information, the Union does not need to show that the acquired information will prove the Respondent has violated Section 16.14, or any other provision of the CBA, only that the information requested will have a bearing on the matter grieved (or potentially to be grieved). See PAE Aviation & Technical Services LLC, 366 NLRB No. 95, slip op. at 3 (2018); Public Service Co. of New Mexico, 360 NLRB 573, 574 (2014). The Union’s request was limited in scope and only requested information related to an increase or decrease in the amount of subcontracted work. The requested information was relevant to both the Union’s duty to represent employees in the bargaining process and to the ongoing grievance regarding layoffs and/or reduction of work.

CONCLUSIONS OF LAW

1. By refusing to provide the Union with relevant requested information, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

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

6 The Union did not, at this junction, need to prove that the 2020 layoffs were intended to or did erode bargaining-unit work, or that the use of subcontractors caused a reduction in available unit work. There would be no need to investigate a potential grievance were the proof already apparent.

Article 4.1, cited in the grievance, requires the parties to “apply the terms of this Agreement fairly, in accord with its intent and meaning and consistent with the Union’s status as exclusive bargaining representative of all employees in the Unit.” The Union’s concern that the subcontracting at issue here violated this Article (and/or other Articles and provisions cited in the grievance), while not established, is certainly within the bounds of reason.
REMEDY

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

Having found that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union with information that is relevant and necessary to the Union’s performance of its functions as the collective-bargaining representative of the Respondent’s unit employees, the Respondent will be ordered to cease and desist from this activity, and in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

Affirmatively, the Respondent shall be required to furnish the following information, requested by the Union on June 7, 14, and 25, 2021:

• A list of all DIRECTV/AT&T work orders completed by contractors in the State of Washington from January 1, 2021, to the present (excluding customer sensitive information, but including the individual number of work orders performed by each contractual employee and date performed);

• Statements of work and Home Services Provide agreements between DIRECTV/AT&T and all contractors performing DIRECTV/AT&T work in the State of Washington; and

• All communications related to scheduling or assignment of work to contractors performing DIRECTV/AT&T work in the State of Washington in 2021.

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

ORDER

The Respondent, DirecTV, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bargaining in bad faith with the International Brotherhood of Electrical Workers Local 89 (Union) by or refusing to provide it with information that is relevant and necessary to its role as your exclusive collective-bargaining representative.

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

7 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.
2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, provide the Union with the information it requested by letter dated June 7, 14, and 25, 2021:

• A list of all DIRECTV/AT&T work orders completed by contractors in the State of Washington from January 1, 2021, to the present (excluding customer sensitive information, but including the individual number of work orders performed by each contractual employee and date performed);

• Statements of work and Home Services Provide agreements between DIRECTV/AT&T and all contractors performing DIRECTV/AT&T work in the State of Washington; and

• All communications related to scheduling or assignment of work to contractors performing DIRECTV/AT&T work in the State of Washington in 2021.

(b) Within 14 days after service by the Region, post at its facilities in the State of Washington copies of the attached notice marked “Appendix.” Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 25, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 2022

Eleanor La
Administrative Law Judge

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8 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”
APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to interfere with, restrain, or coerce you in the exercise of the above rights.

The International Brotherhood of Electrical Workers Local 89, affiliated with the International Brotherhood of Electrical Workers (Union), is the exclusive collective-bargaining representative of our employees in the following unit:

All full-time and regular part-time administrative support assistants, office coordinators, premises technicians, and warehouse assistants working in Washington State.

WE WILL NOT bargain in bad faith with the Union by refusing to provide it with information that is relevant and necessary to its role as your exclusive collective-bargaining representative.

WE WILL provide the Union with the following information it requested:

A list of all DIRECTV/AT&T work orders completed by contractors in the State of Washington from January 1, 2021, to the present (excluding customer sensitive information, but including the individual number of work orders performed by each contractual employee and date performed);

Statements of work and Home Services Provide agreements between DIRECTV/AT&T and all contractors performing DIRECTV/AT&T work in the State of Washington; and

All communications related to scheduling or assignment of work to contractors performing DIRECTV/AT&T work in the State of Washington in 2021.

WE WILL NOT in any like or related manner interfere with your rights under § 7 of the Act.
DIRECTV, LLC

(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.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge’s decision can be found at www.nlrb.gov/case/28-CA-289622 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, (206) 220-6284.