UNITE HERE Local 1 *and* Hyatt Regency Chicago. Cases 13–CB–217959, 13–CB–220319, and 13–CB–228165

April 30, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On September 26, 2019, Administrative Law Judge Christine E. Dibble issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed answering briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the judge's recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondent, UNITE HERE Local 1, Chicago, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from refusing to bargain collectively with Hyatt Regency Chicago (the Employer) by failing and refusing to furnish it with requested information that is relevant and necessary to the Employer's ability to prepare for or defend against grievances.

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

(a) Furnish to the Employer, in a timely manner, the information requested by the Employer on October 9, 12, 13, and 17, 2017; December 18 and 22, 2017; January 31, 2018; March 12, 13, 20, and 29, 2018; April 9, 10, 16, 23, 26, and 30, 2018; May 10, 2018; and June 8, 28, and 29, 2018, unless it is established in a compliance proceeding that the Employer has no ongoing need for this information.

(b) Within 14 days after service by the Region, post at its union offices in Chicago, Illinois, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 13, 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, 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 members 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.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 13 signed copies of the notice in sufficient number for posting by Hyatt Regency Chicago, if it wishes, in all places at its Chicago, Illinois facility where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 13 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. April 30, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

[1] In the absence of exceptions, we adopt the judge's finding that the Respondent violated Sec. 8(b)(3) by refusing to provide the Employer requested relevant information.

[2] We find merit in the Respondent's exception to the judge's recommended remedy requiring it to train its current organizers and representatives in properly responding to information requests. We find that the Respondent's unfair labor practices are not sufficiently egregious to warrant this extraordinary remedy and that the Board's traditional remedies are sufficient to effectuate the policies of the Act. We amend the judge's recommended remedy accordingly.

The Respondent also excepts to the judge's production remedy, arguing that the Employer no longer needs certain requested information. As the Respondent did not make this argument during the hearing before the judge, we order the Respondent to produce the requested information unless it establishes in a compliance proceeding that the Employer has no ongoing need for it. See, e.g., *Strategic Resources, Inc.*, 364 NLRB No. 42, slip op. at 2 & fn. 4 (2016).

We have modified the judge's recommended Order to conform to the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

[3] 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."

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
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 refuse to bargain collectively with Hyatt Regency Chicago (the Employer) by failing and refusing to furnish it with requested information that is relevant and necessary to the Employer's ability to prepare for or defend against grievances.

WE WILL furnish to the Employer in a timely manner the information it requested on October 9, 12, 13, and 17, 2017; December 18 and 22, 2017; January 31, 2018; March 12, 13, 20, and 29, 2018; April 9, 10, 16, 23, 26, and 30, 2018; May 10, 2018; and June 8, 28, and 29, 2018, unless it is established in a compliance proceeding that the Employer has no ongoing need for this information.

UNITE HERE LOCAL 1

The Board's decision can be found at https://www.nlrb.gov/case/13-CB-217959 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.

Elizabeth Cortez, Esq., for the General Counsel.
Bradley Wartman, Esq. and *Peter Andjelkovich, Esq.,* for the Charging Party.
David Barber, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, ADMINISTRATIVE LAW JUDGE. This case was tried in Chicago, Illinois, on January 28–30, 2019, and April 8–9, 2019. Hyatt Regency Chicago (Charging Party/Hyatt) filed charges in Cases 13–CB–217959, 13–CB–220319, and 13–CB–228165 on April 5, 2018, May 15, 2018, and September 27, 2018, respectively. (GC Exhs. 1(a), 1(c), 1(e).)[1] On September 28, 2018, the General Counsel issued a consolidated complaint and notice of hearing for cases 13–CB–217959 and 13–CB–220319; and issued an order further consolidating cases, second consolidated complaint and notice of hearing for case 13–CB–228165 on November 5, 2018. (GC Exh. 1(j).) The second consolidated complaint alleges that from about October 7, 2017, to about June 29, 2018, the Respondent has failed and refused to furnish the Charging Party with information requested by the Respondent. UNITE HERE Local 1 (the Respondent/the Union) filed timely answers to both complaints denying all material allegations.

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

FINDINGS OF FACT

I. JURISDICTION

Hyatt Regency Chicago (the Charging Party or Hyatt), a corporation, is engaged in the business of operating a hotel in Chicago, Illinois. During the calendar year preceding the filing of the unfair labor practice charge, the Charging Party purchased and received goods and materials valued in excess of $5000 directly from points outside the state of Illinois and derived gross revenues valued in excess of $500,000. At all material times, the Charging Party has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that at all material times it has been a labor organization within the meaning of Section 2(5) of the Act.

[1] Where applicable, abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "U. Exh." for Respondent's exhibit; "CP Exh." for Charging Party's exhibit; "ALJ Exh." for administrative law judge's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel's brief; "R. Br." for Respondent's brief; and "CP Br." for Charging Party's brief. My findings and conclusions are based on my review and consideration of the entire record.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Charging Party's and Respondent's Agents

The Charging Party operates a hotel in Chicago, Illinois, where it employs approximately 1200 employees. Zachary King (King) is the Charging Party's director of labor relations. He is responsible for union contract negotiations, and the grievance procedure. King is also the ultimate decision-maker on whether to resolve grievance actions or pursue them to arbitration. Katerina Bircanin (Bircanin) reports directly to King and monitors the Respondent's compliance with the collective-bargaining agreements (CBA) it maintains with several unions. She also handles information requests from the Union, and attends grievance meetings, mediations, and arbitration hearings.

The Respondent represents more than 16,000 employees in the Chicago metropolitan area, downstate New York, and Indiana. During the period at issue, the Respondent represented approximately 800 employees at the Hyatt. The record establishes that the following constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full and regular part-time culinary employees, food and beverage employees, bartenders, housekeeping employees, uniform services employees, and banquet employees employed by the Charging Party at its facility located at 151 East Wacker Drive, Chicago, Illinois, but excluding clerical employees, guards, professional employees and supervisors as defined in the National Labor Relations Act.

(GC Exh. 1(j).) In November 2004, Sara Foran (Foran) began working for the Respondent as a union organizer representing bargaining unit members at several hotels in the Chicago metropolitan area. In 2009, she became a lead organizer for the Respondent. In late 2011, the Respondent formed the contract enforcement division, and Foran was appointed to head it. Foran, Administrative Representative Kathy Reynolds (Reynolds), and three unnamed workers comprised the initial staff in the contract enforcement division. By June 2017, the contract enforcement division staff had significantly increased. Eventually Matt Walsh (Walsh), Rachael Brumleve (Brumleve), and Fatima Jurado (Jurado) came aboard as contract enforcement representatives (referred to, informally, as union representatives); and Barbara Suarez Galeano (Galeano) was hired as a contract assistant.

The Charging Party and the Respondent have had a 40-year bargaining relationship. The current CBA is effective September 1, 2018, through August 31, 2023. The allegations at issue arose during the period covered by the prior CBA which ran from September 1, 2013, through August 31, 2018.[2]

B. Grievance Process Set Forth in the CBA

The grievance process between the Charging Party and the Respondent is set out in Section 46 of the CBA.[3] Section 46 provides in relevant part:

> (a) Any employee or one of a group of employees, any Shop Steward, or any Local Union having a grievance may, within not more than seven (7) calendar days after the occurrence of the event resulting in the grievance, discuss the matter with the immediate supervisor or department head of the Employer, who will attempt to adjust it within seven (7) calendar days from the date received. Unless the grievance is thereby resolved, the grievance shall no later than fourteen (14) calendar days from the date of the occurrence, be reduced to writing and submitted by a designated representative of the Union to the Employer's Human Resources Department, which shall submit its answer to the Union in writing within seven (7) calendar days thereafter.

(GC Exh. 2(a) at 38.) Prior to filing a grievance with the Charging Party, the bargaining unit employee contacts the Respondent to discuss the allegation. The Respondent has developed an internal grievance intake form which it uses to record bargaining unit members' notice to file a new grievance. The form contains a list of five (5) generalized bases for the grievance. The bases are listed as:

- Unjust Discipline on or about in violation of all relevant CBA Provisions including Section(s) [section to be inserted]
- Scheduling on or about [date to be inserted] and is ongoing and continuing in violation of all relevant CBA provisions including Section(s) [section to be inserted]
- Sub-Contracting on or about and ongoing and continuing in violation of all relevant CBA provisions including [section to be inserted]
- Non-Bargaining Unit Work on or about and ongoing and continuing in violation of all relevant CBA provisions including Section(s) [section to be inserted]
- Other: [nature of grievance to be inserted]

(GC Exh. 3(a).) When the Union representative checks off an alleged violation, the representative typically includes slightly more detail, such as the date of the alleged violation and a few relevant facts. The information included on the intake form comprises the basis or bases of the grievance filed with the Charging Party. Regarding the grievances referenced in this case, the Respondent has refused to share the grievance intake form with the Charging Party arguing that the document is protected from

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[2] Unless otherwise noted, the CBA referred to throughout this decision covers the period from September 1, 2013, through August 31, 2018.

[3] In the current CBA, the grievance process is set out in Sec. 47 of the CBA and provides in relevant part:

> Any employee or one of a group of employees, any Shop Steward, or any Union having a grievance may, within not more than seven (7) calendar days after the occurrence of the event resulting in the grievance, discuss the matter with the immediate supervisor or department head of the Employer, who will attempt to adjust it within seven (7) calendar days from the date received. Unless the grievance is thereby resolved, the grievance shall no later than fourteen (14) calendar days from the date of the occurrence, be reduced to writing and submitted by a designated representative of the Union to the Employer's human resources department, which shall submit its answer to the Union in writing within seven (7) calendar days thereafter. (GC Exh. 2(b) at 38.)

disclosure under a labor relations privilege and the work product doctrine.

Grievances that are filed by the Respondent with the Charging Party are usually first reviewed by Bircanin. She determines whether the information contained in the grievance is adequate for her to investigate the allegations. If Bircanin believes that the information is insufficient for her to assess the validity of the claim, she submits a request for information (RFI) to the Respondent. Bircanin uses a standardized RFI, with adjustments made to accommodate the specifics of each grievance. Typically, the RFI asks the Union to provide: additional facts about the grievance, all documentation the Union possesses related to the grievance, and evidence the Union complied with step one of the grievance procedure. The RFI gives the Union 14 days to respond to the requested information.

The grievance process also allows for grievance meetings between the parties. These meetings are for the parties to gather additional information and attempt to resolve the matter prior to arbitration. After the Union consults with King and/or Bircanin on mutually agreeable dates for the grievance meetings, King, Bircanin, and/or the Charging Party's Human Resources Director David French (French) may meet with the Union representatives, the grievant, or both, to discuss the allegations. Grievance meetings are generally scheduled at the request of the Respondent, and it is the Respondent who determines which grievances will be discussed at the meeting. (Tr. 303, 437.)[4] The CBA states that if a grievance is not resolved by the human resources department, the Union may, with agreement of the Employer, submit the grievance to mediation (Step 2). If the mediation does not take place within twenty-eight (28) calendar days of submission from the date of mediation, the party bringing the grievance may refer it to arbitration.[5]

C. Charging Party's RFI: October 9, 2017

On October 2, 2017, the Respondent filed grievance number 20172063 with the Charging Party. The grievance alleged a violation of the CBA when "CVS housemen" were "schedule[ed] on or about 9/21/17 and is ongoing and continuing in violation of all relevant CBA provisions including Section(s) 31, 30, 32, 11." (GC Exh. 3(a).) On October 9, 2017, Bircanin[6] responded in writing to the grievance and also sent a RFI to Reynolds, Walsh, and Brumleve asking, "in order to complete a proper investigation and provide a proper response," that the Respondent provide "all facts, photos, videos, documents, names, dates, times, locations and any other information pertaining to this grievance, including, but not limited to all notes taken by the Grievant, Shop Steward and Union Representative." (GC Exh. 3(b) at 1.) Bircanin also requested all "facts, photos, videos, documents, names, dates, times, locations, and any other information" related to any discussion between the union and the grievants' supervisor or department head. She explained that the Charging Party needed this information to determine whether the Union had engaged in the process proscribed for in step one of the grievance procedure. Bircanin also indicated that the grievance was deficient because it was vague and only referenced a single date even though it lists the violation as ongoing and continuing. According to her, the grievance failed to provide the Charging Party with enough detail to investigate the incident.[7] The deadline for providing the RFI was within fourteen (14) days from the date of the Charging Party's response to the grievance.

On October 10, 2017, Jurado, on behalf of the Respondent, replied to the Charging Party's RFI in an email noting, "per your request, here is the information regarding the basis of the aforementioned grievance. Grievant claims that on 09/21/17 & 09/28/17 there was a conflict with the posting of the schedule. Thank you." (GC Exh. 3(c) at 3.) On the same day, the Charging Party renewed its request for information, referencing Jurado's email and asking, "is it the Union's position that the email below is all the information [the Union] has in its possession that is responsive to the Hotel's October 9th request?" Id. The Charging Party also notified the Respondent that it "should include a narrative explanation and the identification and production of evidence in support of the claim. These timely and complete disclosures by the Union are not only required by law but are needed by the Hotel in order to adequately investigate the basis of the

[4] The Charging Party argued that the Union has frequently begun refusing to hold grievance meetings for grievances related to subcontracting or to management employees performing bargaining unit work (referred to by the parties as sec. 6 and/or 56 work). Also, the Charging Party contends that the Union has developed a practice of refusing to hold grievance meetings for grievances that have been or attempted to be slated for arbitration. (Tr. 441–443, 447.) While the parties disagree on who is responsible for agreeing to whether sec. 6 and 56 work is to be discussed at the grievance meetings, it is undisputed that such meetings are rare.

[5] The Respondent's interpretation of the CBA is that step one of the grievance procedure, that of discussing the grievance with an employee's immediate supervisor or department head, is optional, and the Union may, if it desires, bypass that step and submit a grievance in writing to the human resources department within 14 days. The Hyatt's position is that the first step is *not* optional, and that the Union may only submit a grievance *after* attempting to resolve the issue with an employee's immediate supervisor or department head. I find that this is purely a question of the correct interpretation of the CBA, and thus within the sole purview of the arbitration process. Moreover, it is not germane to my decision regarding the merits of this complaint.

[6] Bircanin provided undisputed testimony that although some of the RFIs were signed by King and others by herself, she was responsible for sending the RFIs to the Respondent. Occasionally, Bircanin would issue a few RFIs in her own name, but most were sent in King's name. (Tr. 45.) Consequently, I will refer to RFI related messages as being sent to or from Bircanin, even though the messages are sometimes sent from King's email address.

[7] The Charging Party's RFIs follow the same format. Although details such as the date and name of the grievant may vary, the remaining language in the RFI is the same, as is the information sought and the arguments made—that the Union's requested remedy is unavailable, the grievances are conclusory, the grievances were not "reduced to writing" as required by the CBA, and the grievances list each violation as "ongoing and continuing" even while they refer to specific limited dates. In the interests of conciseness, I will not reiterate these arguments for each grievance discussed below. Rather, unless otherwise indicated, it can be assumed that each of the Charging Party's initial RFIs makes the same arguments and requests the same kinds of information.

Grievant's claims and preserve relevant evidence." (GC Exh. 3(c) at 3.)[8]

By email dated, October 12, 2017, Jurado responded to the Charging Party. The response reads in relevant part:

> You can't be serious. The employer takes action for reasons which the union only knows from what the grievant is able to tell us. This information is only fragmentary,at best, since the employer does not give the grievant complete disclosure of all information in its possession which led to the action. Then the union investigates the grievance. The investigation focuses initially on what the employer knows about its own action. It then extends to finding information meeting the issues raised by the employer, which may entail further interviews with the grievant, interviews of witnesses, obtaining documents from third -party sources, etc. So of course the union will present more information beyond the initial report by the grievant at each stage in the processing of the grievance, including arbitration. The question of whether a grievance followed proper procedural steps, and if not, whether it should be barred, is for the arbitrator to decide. John Wiley & Sons v. Livingston, 376 U.S. 543 (1964). Hyatt is obligated to proceed to arbitration on this grievance. In arbitration, it may assert procedural irregularities as a defense. Because procedural issues are only defenses, it does not give Hyatt the right to refuse to arbitrate.
>
> The Union will not turn over to HRC notes made by union staff or shop stewards in the course of investigating and preparing the grievance for presentation. These notes contain communications between union staff and stewards and HRC employees. Section 7 of the NLRA gives employees the right to keep their union activities confidential. Disclosing their confidential communications to HRC would tend to chill them in their willingness to continue to communicate, thereby hampering the Union's ability to represent them and obtain HRC's compliance with the agreement. Although the Union would not turn over these notes to HRC in any event, I note that HRC has repeatedly subjected its employees to threats of retaliation for exercising their Section 7 rights in developing information helpful in prosecuting HRC's violations of the collective-bargaining agreement. The notes also contain the impressions of Union staff and stewards and their strategies for presentation of the case through the grievance and arbitration procedure. It has long been the law that an employer has no right to this information, even to defend itself in an unfair labor practice proceeding. If collective bargaining is to work, the parties must be free to formulate their positions and devise their strategies without fear of exposure. The response presented by the Union provided all facts known to the Union concerning this grievance.
>
> Attached you will find the form requested.[9]

(GC Exh. 3(c) at 1–2.) This email response was used by the Respondent in most of its responses to the Charging Party's RFIs in this case. Consequently, hereafter I will refer to this response as the Respondent's standard refusal.

On October 13, 2017, the Charging Party again replied by taking issue with the Respondent's claim that any notes relating to its meeting with and interview of the grievant was confidential and privileged. The Charging Party noted that historically those notes have been provided to it by the Respondent, and moreover, the Union must provide a privilege log so that the privilege can be properly reviewed and challenged. (GC Exh. 3(c) at 1.) The Respondent did not respond to the Charging Party's October 13, 2017 email.

D. Charging Party's RFI: October 12, 2017

On October 5, 2017, the Respondent filed grievance numbers 20172102 and 20172103 with the Charging Party. The grievance number 20172102 alleged a violation of the CBA when "on or about October 3, 2017 and ongoing and continuing management increased [Alex King]'s workload." (GC Exh. 4(a).) On October 12, 2017, Bircanin sent its standard RFI to the Respondent. See, GC Exh. 3(b). On October 12, 2017, the Respondent responded by repeating the grievance without providing any additional information: "Grievant claims that on 10/03/17 his work load increased." (GC Exh. 4(c) at 4.) On October 13, 2017, the Charging Party renewed its RFI. On October 16, 2017, Jurado, on behalf of the Respondent, responded with its standard refusal. The following day, the Charging Party requested that the Respondent provide it with a privilege log identifying all documents it claims were privileged, so that the privilege could be reviewed and challenged. The Respondent did not respond.

Grievance number 20172103 alleged that banquet stewards[10] were subjected to "scheduling on or about October 3, 2017, and ongoing and continuing, in violation of all relevant CBA provisions…." (GC Exh. 4(d).) Upon receipt of the grievance, Bircanin contacted the managers for the banquet stewards to ask whether they were aware of any actions which would have given rise to the grievance. On October 12, 2017, Bircanin responded to the grievance and issued the Charging Party's stock RFI to clarify the nature of the alleged violation.[11] The Respondent replied via email that, "Grievant claims that on 10/03/17 utility stewards are doing the job of the banquet stewards and the banquet stewards are not being scheduled." On October 13, 2017, the Charging Party renewed its RFI. On October 16, 2017, Jurado responded with the Charging Party's standard refusal response; and the next day Bircanin requested a privilege log but the Respondent did not reply.

[8] This language is consistently used in the Charging Party's renewed RFIs, with the exception of those made in GC Exh. 9(c).

[9] The "form" referenced in the email response was not included in the record.

[10] Banquet stewards carry dishes to and from events, as opposed to banquet servers, who serve food and drinks to banquet guests. (Tr. 477–478.)

[11] Bircanin testified that she felt that there was not enough information for the Charging Party to investigate the grievance because the grievance listed "banquet stewards" as the grievant but the Union's response indicates that there was one singular grievant; and the grievance did not explain why the scheduling practice described would be a violation of the CBA and the harm suffered as a result by the Union.

E. Charging Party's RFI: October 13 and 17, 2017

On October 6, 2017, the Respondent filed grievance number 20172111[12] with the Charging Party that listed the grievant as "Big Bar Bartenders" and the basis of the grievance as "on or about September 28, 2017, and ongoing and continuing management is creating a hostile work environment and not treating workers well." (GC Exh. 5(a).) Consequently, Bircanin contacted the Charging Party's human resources department, and at least two of the Big Bar managers to ask whether they were aware of any activity at the bar which would have resulted in a hostile work environment for employees. (Tr. 190.) On October 13, 2017, Bircanin responded to the Respondent with a request for information. In response to the Charging Party's RFI, on October 16, Jurado replied, "on 09/28/17 management created a violent and hostile work environment and is not treating workers equally. This is an ongoing and continuing issue." Jurado did not provide any additional information as part of the Respondent's reply to the RFI. Bircanin, in turn, renewed the Charging Party's RFI on October 17, 2017, asking the Respondent to clarify what the grievant meant by the phrase "violent and hostile." Jurado sent the Respondent's standard refusal. On October 19, 2017, Bircanin asked the Respondent for a privilege log, which the Charging Party did not receive.

F. Charging Party's RFI: December 18, 2017

On December 11, 2017, the Respondent filed grievance number 20172598 on behalf of the named grievant, Antonio Avila (Avila), alleging a violation of the CBA because Avila was "schedule[ed] on or about December 1, 2017 and is ongoing and continuing." (GC Exh. 6(a).) Bircanin testified that she was able to speak directly with Chynna West (West)[13] as well as review the department's records and schedules, and "did not see anything outside of…normal procedure being done." (Tr. 194; see also Tr. 74–75.) Consequently, on December 18, 2017, Bircanin responded to the grievance and sent a RFI to the Respondent. The information the Respondent provided was a statement dated December 21, 2017, noting:

> grievant claims that on or about December 1, he was denied an opportunity to work overtime from Chynna West. Overtime was instead given to an employee with less seniority and to an employee in another classification.

(GC Exh. 6(c).) On December 22, 2017, Bircanin replied via email to Reynolds and Brumleve[14] renewing the RFI. Jurado sent the Respondent's standard refusal on December 26, 2017. In response, on December 26, 2017, Bircanin requested that the Respondent provide the Charging Party with a privilege log but never received it. Nonetheless, the parties continued to work on resolving the grievance. Subsequently, in November 2018, a grievance meeting was held where Bircanin and King interviewed the grievant. (Tr. 195.) During this meeting, Bircanin first learned that Avila was alleging that on December 11, 2017, his supervisor gave bargaining unit supervisors overtime in lieu of Avila; and, unlike the Respondent's initial RFI response, was not claiming that overtime was instead given to employees in another classification. (See Tr. 78.)

G. Charging Party's RFI: December 22, 2017

On December 18, 2017, the Respondent filed grievance number 20172701 signed by Walsh that named the grievant as "Housekeepers" and indicated that the reason for the grievance was "scheduling on or about December 4, 2017 and ongoing and continuing."[15] (GC Exh. 7(a).) Upon receipt of the grievance, Bircanin contacted the housekeeping for additional information about the grievance but there was nothing else to provide. Subsequently, on December 22, 2017, Bircanin emailed the Respondent a RFI to gain further insight into the nature of the grievance. On January 2, 2018, Walsh responded with the clarifying information that "grievant claims on December 4 management asked over 20 housekeepers to do overtime. This was the result of a high number of housekeepers that were not scheduled or called in to work that day." (GC Exh. 7(c) at 2.) Consequently, Bircanin contacted department managers, and learned that 20 housekeepers had been given overtime work on the date of the grievance, but that it was not, to her knowledge, "outside normal procedure." (Tr. 82; Tr. 200.) Despite the information she obtained about the grievance, Bircanin believed the grievance was insufficient because it was vague and lacked the specificity needed to identify, with certainty, the exact nature of the alleged violation. (Tr. 201.)

On January 2, 2018, Bircanin renewed the RFI. In response, on January 9, 2018, the Respondent sent its standard refusal. Due to the Respondent's response to the RFI, on January 10, 2018, the Charging Party requested a privilege log, but the Respondent did not reply. The grievance is still pending.

H. Charging Party's RFI: January 31, 2018

On January 24, 2018, the Respondent filed grievance number 20180153 on behalf of banquet servers alleging that "on or about January 11, 2018, and ongoing and continuing, management improperly paid grievants for a function they worked on December 26, 2017, in violation of all relevant CBA provisions …." (GC Exh. 8(a).)[16] On receipt of the grievance, Bircanin contacted the banquet and payroll departments and learned that there were adjustments made on the payroll for a December 26, 2017 function. According to their records, however, there were no improper payments made on that date. Consequently, on January 31, 2018, Bircanin sent a RFI to the Respondent seeking "all facts, photos, videos, documents, names, dates, times, locations and any other information pertaining to this grievance, including, but not limited to all notes taken by the Grievant, Shop Steward and Union Representative." (GC Exh. 8(b).) On January 31, 2018, Jurado responded on behalf of the Respondent with a written statement that the grievant alleged on December 26, 2017, a manager, "authorized to take money from their checks in order to pay another coworker because of an error with the hours they worked." (GC Exh. 8(c).) The response included, as an attachment, a banquet order that listed the customer, date, and location

[12] It is undisputed that GC Exh. 5(a) incorrectly lists the grievance number as 20172103. The correct grievance number is 20172111.

[13] China or Chynna West is the assistant events setup manager at Hyatt Regency Chicago. (Tr. 193.)

[14] Bircanin, using King's email address, copied herself and French on the email.

[15] The Charging Party employs approximately 200 housekeepers.

[16] The Charging Party employs approximately 180 banquet servers.

of the event related to the grievance. After receiving the Respondent's answer, Bircanin felt it was insufficient because the response indicated a single grievant whereas the initial grievance alleged multiple grievants. She also believed the grievance was vague because it did not list the names of the employees or managers involved in the alleged incident. Moreover, although Bircanin reviewed the payroll records and determined that on the date in question an error occurred but was corrected, she was unsure whether this pay adjustment was the cause of the grievance. Consequently, on February 1, 2018, the Charging Party sent a request for clarification and renewed its RFI to the Respondent. Jurado sent the Respondent's standard refusal on the same day. Later that day, the Charging Party requested a privilege log, but the Respondent did not respond.

I. Charging Party's RFI: March 12, 2018

On November 1, 2016, the Respondent filed grievance number 20162235 on behalf of "all employees" and listed the allegation as, "[n]on-bargaining unit work on or about 10/31/2016, and is ongoing and continuing, along with the Hotel by its conduct has and continues to erode bargaining unit work, and, therefore, the bargaining unit in violation of all relevant CBA provisions …."[17] (GC Exh. 9(a).) Sometime between December 11, 2016, and July 18, 2017, the Charging Party sent the Respondent a RFI in response to the grievance. The Respondent's reply was sent to the Charging Party on July 18, 2017, which consisted of a spreadsheet listing 19 separate alleged violations of the CBA. The spreadsheet lists the date, time, location, manager, witness, the bargaining unit work performed in violation of the CBA, and documentation that exists relevant to each violation (text, email, and/or photo). Witnesses and mangers are also identified on the spreadsheet but only by their first names. (GC Exh. 9(b).)

After receiving the spreadsheet, Bircanin followed up with a supplemental information request on August 21, 2017.[18] The RFI asked that for each violation the Respondent, "identify all steps undertaken to comply with Step 1 of the grievance procedure in the CBA. Also, provide electronic copies of all pictures or videos." (GC Exh. 9(b) at 1.) In addition, the RFI demanded specific information related to each individual entry in the spreadsheet, such as the surnames of the employees involved,[19] the duration of the alleged violations, clarification of the locations where the alleged violations occurred,[20] and a more detailed description of the circumstances surrounding each allegation and the work allegedly being performed in violation of the CBA. Bircanin did not receive a response to the RFI. Consequently, on March 12, 2018, King renewed the RFI and asked the Charging Party to provide the information within seven (7) days. On March 26, 2018, the Respondent wrote to inform the Charging Party that it had provided all the documentation that the Respondent had in its possession about each violation. The reply also incorrectly noted that Foran, in her initial reply of July 18, 2017, had provided digital photographic images to the Charging Party, and suggested that these photographs were enough to answer several of the Charging Party's queries.[21] The record shows that eventually the Respondent provided the Charging Party with digital copies of the photographs. (Tr. 213–214; GC Exh. 9(b).) Regarding the Charging Party's other requests, Brumleve responded via email:

> [T]he Union does not currently have the information necessary to respond to them, and we don't believe it is reasonable for us to go and gather that information at this time. Local typically investigates reports of contract violations to the extent necessary to determine that a violation occurred, then does more detailed investigation when it prepares witnesses just before an arbitration hearing. The amount of detail you are asking for here is unreasonable and would require the Union to spend many hours interviewing witnesses, only to have to repeat the process right before the arbitration hearing.

(GC Exh. 9(b) at 10–11.) In response to this email, Bircanin sent a revised RFI[22] on March 27, 2018, asking for the requested information by March 30, 2018. Brumleve responded on March 29, 2018, with an email that stated, in relevant part:

> Thank you for your reply of March 27, 2018. I note you did not address the Union's concerns that the Employer's requests were in bad faith and would require an unreasonable amount of time and resources on the part of the Union. Would you please explain whether you believe the Union has an obligation to interview employee witnesses at this time in order to gather information to respond to the Employer's requests? Would you please also explain why the Employer changed its information request to omit certain items?
>
> We have taken another look at our records. One thing we discovered is that, as best we can tell, the original digital images were not transmitted to the Employer along with the spreadsheet of violations, as we had previously believed. If you had pointed this out earlier, rather than just repeating your request with no explanation, we could have gotten you the photos sooner. I am attaching the original digital image with this email.

[17] This grievance initially consisted of a single event involving an employee, Demetrius Jackson. However, the grievance was later expanded to include 19 separate allegations which were listed under one grievance number (Tr. 211).

[18] The form of this RFI deviated from the Charging Party's standard RFI referenced in this case.

[19] For example, the Charging Party wrote, in response to the abovementioned entry on the spreadsheet, "there are multiple employees named 'Kevin.' Do you mean Kevin Barnes? If not, whom (sic) do you refer?" (GC Exh. 9(b) at 1.)

[20] For example, in response to one entry that listed the location as "grand ballroom," the Charging Party wrote "What does 'Grand Ballroom' mean? E.g., inside the ballroom, back of the house, foyer, etc." (GC Exh. 9(b) at 2.)

[21] For example, in response to the Charging Party's query as to whether a manager listed as "Kevin" was Kevin Barnes, the Respondent replied, "can't you tell whether the person doing bargaining unit work is Kevin Barnes from the photographs?" (GC Exh. 9(b) at 10.) In response to the Charging Party's query seeking clarification as to what location the "Grand Ballroom" referred to, the Union stated that "we believe the information already provided is sufficiently detailed as to the location of the violation." (GC Exh. 9(b) at 11.)

[22] Bircanin testified that she and King revised the information request together after re-evaluating what information the Charging Party needed to investigate the grievance. (Tr. 94–95.)

> As for your question about Step 1 compliance, we believe you have this information already, but here is the best we can gather from our records: A general grievance was sent by Demetrius Jackson to you on about November 1, 2016, which discussed the 10/31/2016 violation and stated that violations were ongoing and continuous. We believe you have a copy of this, but if you don't, let us know and we'll dig one up for you. Then, on about July 18, 2017, Sara Foran sent you a spreadsheet "of all the violations contained in this grievance ", along with all the supporting documentation the Union had for each allegation - emails, text messages, and photos. We believe that is the extent of "Step 1" interaction for these allegations. As you know, for several years the parties have had continuing interactions at many levels, including arbitration proceedings, about allegations of violations of Section 56 of the CBA.
>
> As for the remainder of your requests, we can tell you that the 11/18/2016 entry on the spreadsheet does appear to be a typo, since the supporting documentation indicates November 13. The "Rob" referred to in that allegation is Robert Harris. As for your other questions about people's last names, we might be able to make some guesses based on the provided documentation. For example, the 1/17/2017 documentation, which we provided you, refers to "executive steward Angelo." We can infer from this that the individual is indeed Angelo Brimmer. But we don't want to be in the position of making guesses based on information we have already provided you. We believe the Employer is in a better position to make these inferences at this time, since you know who your managers were.
>
> As for the remainder of your information requests, the Union reasserts that we believe they have been made in bad faith, that they require an unreasonable amount of Union resources for responses at this time, and that if you insist on responses you are misusing the information—request process by trying to turn it into a litigation discovery process for the upcoming arbitration. We have given you all the documentation we have about these violations. If you disagree with any of this, please explain why.

(GC Exh. 9(b) at 8.) In its response, the Respondent also attached files and suggested scheduling a time to meet and discuss "how to improve the processes of requesting and sharing information about grievances." (GC Exh. 9(c) at 1.) The attached files included email and text message correspondence between Foran and several bargaining unit employees, with employees describing instances of violations of section 65 of the parties' CBA. (GC Exh. 9(b).)

After reviewing the digital files, the Charging Party emailed another revised RFI to the Respondent requesting, among other things, that the Charging Party confirm the names of the managers whose surnames were not present in the digital files, clarify the locations where alleged violations occurred, list the exact times and durations of the alleged violations, and the metadata for the digital files. The Charging Party also notified the Respondent that it declined to agree to a meeting because it did not believe a meeting would be "necessary or productive at this time since the requests have been provided to the union and the union refused to answer them as outlined in your correspondence." Further, the Charging Party reproached the Respondent for providing untimely information, noting:

> Furthermore, on March 29, 2018, for the first time the Union provided some untimely information:
>
> - For example 5/17 date—we were previously not able to identify manager, but color picture provided allows us to do so. However, it has been almost a year from the alleged incident date and now would be the first time we can talk to our manager about the incident.
> - The grievant is Demetrius Jackson identified [sic] for the first time.
> - Some pictures that the union had in its possession were provided for the first time allowing the Hotel to identify an incident and an alleged manager.

(GC Exh. 9(c).) The email concluded with:

> There have been many problems in arbitrations where the Union for the first time disclosed evidence which was previously requested and not provided. The Hotel will not permit arbitration by ambush in violation of its due process rights. The Union is under obligation to provide all facts, documents, photos, videos, names of witnesses, dates, times, location, and other information that are the basis for Grievance No. 20162235. It has not done so. Since the Hotel still has not received answers to all of its requests, the Hotel will respond accordingly. (Id.)

Brumleve responded on April 5, 2018, objecting to the information requests as unreasonable and in bad faith. (GC Exh. 9(c) at 1.) Subsequently, the grievance settled.

J. Charging Party's RFI: March 13, 2018

On February 13, 2018, the Respondent sent the Charging Party a list of open grievances and one of the grievances listed was number 20171930. On March 13, 2018, the Charging Party, via email, requested that the Respondent resend a copy of grievance number 20171930 because it did not have a record of it being filed. (GC Exh. 10(a).) The Respondent did not provide a copy of the grievance, but rather offered to formally settle it. Consequently, the Charging Party sent additional requests asking for a copy of the grievance, but the Respondent never provided it. It is undisputed that grievance number 20171930 was never filed with the Charging Party but rather was administratively closed by the Respondent.

K. Charging Party's RFI: March 20, 2018

On March 13, 2018, the Respondent filed grievance number 20180538 alleging that the Charging Party violated the CBA when "all employees" were negatively impacted by the Charging Party "subcontracting on or about 3/5/2018, and ongoing and continuing …." (GC Exh. 11(a).) Bircanin testified that she still felt the details provided in the grievance were insufficient to properly investigate the grievance because, in her opinion, it was impossible to determine who witnessed the incident, and the time and location of the incident. (Tr. 103–104.) Consequently, on March 20, 2018, Bircanin sent a response to the grievance and a RFI to Walsh and Reynolds seeking clarification of the grievance. The Respondent answered that "Grievant claims that on or about 03/05/18 United Maintenance was seen polishing the

landing."[23] In an effort to gain further clarification about the exact nature of the grievance, King and Bircanin spoke with Floyd Holland (Holland), a housekeeping guest runner and shop steward, and learned that United Maintenance had performed work outside in the back of elevator landings in the east tower of the hotel. Based on this information, the Charging Party felt that it had not violated the CBA since this type of cleaning was not regularly done by the Charging Party's employees because they lacked the proper equipment.

Subsequently, on March 23, 2018, the Charging Party sent a renewed RFI seeking, among other items: the duration of any alleged instances of subcontracting in violation of the CBA; specific bargaining unit members harmed by the alleged violations; and the time, locations, and number of subcontractor employees alleged to have worked in violation of the CBA. The Respondent sent its standard response. On March 28, 2018, Bircanin replied, in relevant part:

> Arbitrator Kossoff previously ruled that when a written grievance is filed lacking essential information to allow the Hotel to frame a response, the harm to the Hotel as a result of this deficiency would be alleviated by the Union supplementing the grievance with the necessary information upon request by the Employer….Contrary to your claim, Local 1 is not allowed to produce "only fragmentary" information. It is obligated to produce the information requested by the deadline set forth by the Hotel. In fact, your concession that "the union will present more information beyond the initial report by the grievant at each stage in the processing of the grievance, including arbitration" is directly contrary to the Union's lawful obligations.
>
> As the Hotel has notified the Union multiple times in the past, the Union's unlawful delays in timely providing the Hotel responses to its information demands has resulted in the spoilization of relevant evidence such as security video and the ability of witness being able to recall the event or witnesses leaving the Hotel's employ. So that this important evidence can be preserved, the Hotel insists that the Union provide all information requested in this grievance within seven days.

(GC Exh. 11(c).) The email also asked for a privilege log relating to any documents the Respondent was withholding under a claim of privilege. The Charging Party did not receive a reply.

L. Charging Party's RFI: March 29, 2018

On March 22, 2018, the Respondent filed grievance number 20180662 on behalf of employee Jackie Kizer (Kizer) alleging "unjust discipline on or about 3/8/2018 in violation of all relevant CBA provisions …." (GC Exh. 12(a).) Bircanin learned that the grievance related to a suspension issued to Kizer after a verbal altercation she had with a manager. Subsequently, on March 29, 2018, the Charging Party responded to the grievance and issued a RFI to the Respondent seeking all information related to the grievance and asking whether the Respondent had followed step one of the grievance process. On March 29, 2018, the Respondent answered the RFI with an email that merely reiterated the grievance: "Grievant claims that on March 8, 2018, she was wrongfully suspended." On March 30, 2018, the Charging Party renewed its RFI; and on April 3, 2018, the Respondent replied with its standard refusal.

On April 5, 2018, the Charging Party sent an email to the Respondent stating the information provided was insufficient to understand the allegation that Kizer had been wrongfully suspended and asked for a privilege log "in case there was information the union was claiming privilege on." (Tr. 110). The Charging Party had no further communication with the Respondent regarding the grievance and did not receive the requested privilege log. At some point, however, the Charging Party did provide a surveillance video to the Respondent documenting the incident that led to the suspension and ultimate termination.

M. Charging Party's RFI: April 9, 2018

On June 9, 2017, the Respondent filed grievance number 20171159 on behalf of "all bargaining unit workers." The basis for the grievance "scheduling on or about 6/6/2017 and ongoing and continuing …" and "Non-Bargaining Unit Work on or about 6/6/17 and ongoing and continuing in violation of all relevant CBA provisions including Section(s) 56." (GC Exh. 13(a).) The Charging Party submitted RFIs to the Respondent on June 16, 2017, and follow-ups to the RFIs on June 30, 2017, and July 7, 2017. (GC Exhs. 13(b), 13(c).) The Charging Party sent supplemental RFIs to the Respondent on April 9, 2018. On April 12, 2018, the Respondent answered with its standard refusal. Eventually, the Respondent provided the information. (U. Exh. 14.) The grievance settled months later.

N. Charging Party's RFI: April 10, 2018

On April 3, 2018, the Respondent filed grievance number 20180692 on behalf of the "banquet servers" alleging that "on or about March 23, 2018 and ongoing and continuing management is improperly paying grievants for a discounted function in violation of all relevant CBA provisions …." (GC Exh. 14(a).) On receipt of the grievance, Bircanin contacted the banquet servers' department to ascertain whether there was additional information about the incident leading to the grievance filing. Subsequently, on April 10, 2018, she sent a RFI to the Respondent asking for all information the Respondent possessed relating to the grievance as well as information relating to the Respondent's compliance with step one of the grievance procedure.

Jurado replied to the RFI with additional information, informing Bircanin that "grievant claims that on March 23, 2018, they were improperly paid for a discounted function. Grievant was told it was a lunch for Patrick Donnelly, manager of the year, but it was an awards function."[24] (Tr. 115.) The email also included a list of 20 employees who worked the event and a banquet order for the event. (U. Exh. 15.) Consequently, on April 18, 2018, Bircanin renewed its information request to the Respondent. (GC Exh. 14(c).) On April 19, 2018, the Respondent answered with its standard refusal. Id. In response, Bircanin sent an email

[23] United Maintenance is a contractor that the Charging Party hires to clean certain areas of the hotel. (Tr. 226.)

[24] The Charging Party compensates banquet servers based, in part, on a percentage of the service charge of the banquet event they work. Certain types of "discounted events" (such as in-house functions and promotions) yield a lower pay rate. An in-house lunch for the manager of the year would be discounted, but not an awards function.

to Walsh and Reynolds on April 23, 2018, asking for a privilege log and specifically requesting that the Respondent explain what the grievance meant when it stated that the grievant was incorrectly told the function was a lunch for the manager of the year. Bircanin also asked who participated in the discussion, when it took place, and if the Respondent possessed any notes related to the discussion. The Respondent did not reply, and the grievance is still pending.

O. Charging Party's RFI: April 9, 2018

On April 9, 2018, the Respondent filed grievance number 20180751 on behalf of Jesus Ocampo (Ocampo) alleging he was subject to "unjust discipline on or about 3/14/2018, and ongoing and continuing." (GC Exh. 15(a).) On receipt of the grievance, the Charging Party responded to it and submitted RFIs to the Respondent asking for all information the Respondent had relating to the grievance as well as information relating to its compliance with step one of the grievance process. The Charging Party gave the Respondent 14 days to respond. The deadline lapsed without a response from the Respondent so on April 30, 2018, the Charging Party sent another RFI with a 7-day deadline to respond. The Respondent did not reply. Consequently, on May 7, 2018, the Charging Party sent a second follow-up RFI but again the Respondent did not answer.

P. Charging Party's RFIs: April 26 and May 10, 2018

On April 19, 2018, the Respondent filed grievance number 20180867 on behalf of "banquet employees." The basis for the grievance was "scheduling on or about 4/13/2018, and ongoing and continuing." (GC Exh. 16(a).) On receipt of the grievance, Bricanin contacted the banquet department to determine whether improper scheduling of the banquet servers had occurred. Based on her investigation she was unable to reach a definitive conclusion on the specific nature of the grievance claim. Therefore, on April 26, 2018, the Charging Party sent the Respondent RFIs asking for all information it possessed relating to the grievance as well as information relating to the Respondent's compliance with step one of the grievance process. Pursuant to an email, Jurado responded on behalf of the Respondent writing: "Grievant claims that on 04/12/13 and 04/13/18 there was a violation in the Banquet Department. The agreement that was established in the contract regarding functions and job descriptions was broken." The response included an attachment which contained a handwritten list of banquet employee's signatures beneath Spanish text as well as English text reading "Hyatt Regency Chicago function box lunch." (GC Exh. 16(i).)

Bircanin asked one of the Charging Party's Spanish-speaking managers, Ana Montoya (Montoya), to translate the Spanish text included as part of the Respondent's answer. According to Bircanin, she was told that the Spanish text translated to "there was a big violation in the banquet department based on union contract including description of work." Based on the translation, Bircanin insisted she was still unable to understand the nature of the grievance. She acknowledged, however, that she could have used the information provided by the Respondent, coupled with company records, to ascertain which events the employees whose signatures were on the attachment worked, but did not do so. (Tr. 253–257.)

On May 10, 2018, the Charging Party's renewed its information request by asking for, among other items, the Respondent to explain the basis for its belief that a violation occurred in the banquet department. The Respondent replied on May 15, 2018, with its standard refusal. On May 16, 2018, the Charging Party requested that the Respondent provide it with a privilege log, but the Respondent did not reply.

Q. Charging Party's RFI: April 23 and 30, 2018

On April 16, 2018, the Respondent filed grievance number 20180794 on behalf of the "American Craft Hostesses" alleging that "on or about 4/9/2018, and ongoing and continuing management is improperly distributing gratuities for an event in American Craft …."[25] (GC Exh. 17(a).) On receipt of the grievance, Bricanin contacted the relevant department to review their records, but was unable to find evidence of an event occurring on the date listed in the grievance. Consequently, on April 23, 2018, the Charging Party sent a RFI to the Respondent asking for all information the Respondent possessed relating to the grievance as well as information relating to its compliance with step one of the grievance process. On April 25, 2018, the Respondent answered by clarifying the nature of the grievance as, "grievant claims that on or about 04/09/18 A/C Kitchen & Bar staff and all positions are included on the tips except for the hostesses even though they are required to work and serve their purpose as a greeter to the guests of the party. The issue was discussed with management on 04/09/18." (GC Exh. 17(c) at 3–4.)

Despite the Respondent's reply clarifying the grievance allegation, Bircanin claims she was unable to determine the specific nature of the grievance because she could not find any records that an event was held on the date alleged in the grievance.[26] On April 30, 2018, Bircanin renewed the RFI again asking the Respondent to identify the exact event that was referenced in the grievance because she could not find any documentation that a function as alleged by the grievance was held on April 9, 2018. On May 4, 2018, the Respondent sent its standard refusal. The Charging Party then requested a privilege log for any interview notes and other requested materials that the Respondent possessed but the Respondent did not respond.

R. Charging Party's RFI: April 23 and 30, 2018

On April 16, 2018, the Respondent filed grievance number 20180822 on behalf of Fatima Ibrahim (Ibrahim) alleging that "on or about 4/10/2018, and ongoing and continuing, management improperly sent the grievant home and is improperly scheduling …." (GC Exh. 18(a).) On receipt of the grievance, Bricanin contacted the housekeeping department for additional information about events that may have led to the grievance. She learned that Ibrahim had come to work with a doctor's note which stated that she had work restrictions. Therefore, on April

[25] The Charging Party has a restaurant and bar bearing the name "American Craft" but the hostesses work at the restaurant.

[26] Bircanin also testified that she was confused by the Respondent's answer describing the grievant in the singular because the initial grievance lists multiple grievants (American Craft hostesses). (Tr. 126–27; GC Exh. 17(a).)

23, 2018, the Charging Party sent RFIs to the Respondent asking for all information the Respondent possessed relating to the grievance as well as information about its compliance with step one of the grievance process.

On April 25, 2018, the Respondent answered the RFIs by clarifying that Ibrahim was alleging a violation of the CBA when she was terminated for being unable to handle her workload, notwithstanding her doctor mandated work restrictions. As part of its response, the Respondent also noted that Ibrahim alleged a human resources employee called Ibrahim a liar and told her to "never come back." According to the Respondent, this issue had been discussed with the Charging Party's management on April 7, 2018.

In an effort to obtain additional information about the grievance, Bircanin contacted several managers in the housekeeping department who denied that Ibrahim was terminated and told to "never come back." She also asked Anna Deringer (Deringer), the workers' compensation manager, for details about the alleged events set out in the grievance. Deringer informed Bircanin that it was determined that the Charging Party could not accommodate Ibrahim's medical restriction; and therefore, she could not return to work until her work restrictions were lifted.[27]

Following Bircanin's discussion with the housekeeping department, on April 30, 2018, the Charging Party sent updated RFIs to the Respondent asking for more specific information, including: the basis for the Respondent's assertion that Ibrahim had been terminated;[28] documentation the Respondent used to substantiate its claim that Ibrahim had been terminated; the names of witnesses to the discussion about Ibrahim's work restrictions that allegedly occurred between Ibrahim and management; and the name of the person that allegedly yelled at Ibrahim and told her to "never come back." On May 4, 2018, the Respondent replied with its standard refusal. Consequently, Bircanin requested a privilege log for any interview notes and other requested materials that the Respondent might be withholding but received no response.

S. Charging Party's RFIs: June 8, 2018

On June 1, 2018, the Respondent filed grievance number 20181183 on behalf of Chu Chen (Chen) and Yao Juan Mak (Mak), room attendants, alleging they were subjected to "scheduling on or about 5/18/2018 and ongoing and continuing in violation of all relevant CBA provisions …." (GC Exh. 19(a).) On receipt of the grievance, Bricanin contacted the housekeeping department to identify the specific alleged scheduling violation and gather additional information on the underlying facts. The department did not have any information about the allegation. Consequently, on June 8, 2018, the Charging Party sent a RFI to the Respondent asking for all information the Respondent had on the grievance as well as information relating to the Respondent's compliance with step one of the grievance process. The Respondent answered the RFI by restating the grievance, except that in its response the date of the grievance was changed by one day; and the response referred to the grievant in the singular, despite the original grievance listing two grievants' names.

Notwithstanding the Respondent's reply to the RFI, Bircanin noted that she was still unable to understand the factual basis for the grievance. Therefore, on June 20, 2018, she renewed the RFI. The Respondent issued its standard refusal. Consequently, on June 25, 2018, the Charging Party requested that the Respondent provide it with a privilege log for any interview notes and other materials that it might be withholding. The Respondent did not respond.

T. Charging Party's RFIs: June 28, 2018

On June 11, 2018, the Respondent filed grievance number 20181187 on behalf of Carlos Navarro (Navarro), alleging that he was subjected to "unjust discipline on or about 5/29/18 and ongoing and continuing in violation of all relevant CBA provisions …." (GC Exh. 20(a).) Prior to the filing of the grievance, Bircanin knew that Navarro had been terminated or suspended and was "somewhat" aware of the facts surrounding it. Nevertheless, on June 18, 2018, the Charging Party issued RFIs to the Respondent asking for "all facts, photos, videos, documents, names, dates, times, locations and any other information pertaining to this grievance, including, but not limited to all notes taken by the Grievant, Shop Steward and Union Representative. Please provide within 14 days." (GC Exh. 20(b) at 2–3.) On June 26, 2018, Jurado replied on behalf of the Charging Party:

> Grievant claims 05/17/18, he started work at 2:30 with seven bars from 5:30–6:30. When he arrived at the bar, grievant noticed there weren't any glasses or tables to start prepping. He called Mago and to tell her he didn't have glasses to start working, but she did not answer. Molly, the assistant, arrives and he tells her the problem and she tells him to call Carina. But since he's under a lot of pressure, he took it upon himself and went to the other tower to get classes and begins to set up tables. A few minutes later the grievant was called into the banquet manager's office and was given a write-up. Management then took pictures of him and sent him home for the day. Grievant feels there's one person or several people that are checking everything he does and fells [sic] under a lot pressure.

(GC Exh. 20(b).) On June 28, 2018, the Charging Party sent an email to the Respondent renewing the RFI, including: the names of people that allegedly took photographs of Navarro; the names of people he alleged were "checking up on him"; and copy of the "write-up" allegedly issued to Navarro on May 17.[29] The Charging Party also requested all information the Respondent possessed relating to the grievance as well as information relating to the Respondent's compliance with step one of the grievance process. The Respondent did not provide the requested information.

U. Charging Party's RFIs: June 29, 2018

On June 13, 2018, the Respondent filed grievance number 20181209 with the Respondent identifying the grievant as

[27] This testimony was corroborated by King.

[28] According to Bircanin, Ibrahim was employed by the Charging Party at the time of the grievance and remains in its employ.

[29] Sometime after receiving the grievance, Bircanin questioned managers from the relevant department about Navarro's accusations, but the managers involved with the discipline denied taking any photos of Navarro. The Charging Party also noted that it did not have a record of the alleged "write-up" issued on May 17.

"Convention Services," and alleging a violation of the CBA because of "subcontracting on or about 5/30/2018, and ongoing and continuing …." [30] (GC Exh. 21(a).) The Charging Party employs between 30 and 35 workers in the event set-up department. (Tr. 146–47.)

On receipt of the grievance, Bricanin contacted the event setup department managers, who told her they were unaware that subcontracting had occurred on the date listed in the grievance. Consequently, the Charging Party sent RFIs to the Respondent on June 20, 2018, requesting all information the Respondent had related to the grievance and, specifically, the purported duration of the violation, the specific group of bargaining unit employees harmed, the subcontractor involved, the specific dates the subcontractor's employees performed work, and the type of work the subcontractor performed. The RFI also requested all evidence related to the Respondent's compliance with step one of the grievance process. (GC Exh. 21(b) at 1.) The Respondent answered the RFI with "grievant claims that around May 30, 2018, an outside company was seen moving CS equipment, and the issue was discussed with management on June 1, 2018." (GC Exh. 21(b).)

On June 29, 2018, the Charging Party renewed its request for information because it felt that the Respondent's answer was inadequate. The Charging Party believed that the response did not identify the name of the subcontractor nor the work it allegedly performed. The grievance also listed only one date, despite listing the violation as being ongoing and continuing.[31] On July 3, 2018, the Respondent answered with its standard refusal. Consequently, on July 3, 2018, the Charging Party requested a privilege log for any interview notes and other requested materials that the Respondent might be withholding on the basis of privilege. The Respondent did not respond.

III. DISCUSSION AND ANALYSIS

A. Protective Order

During the trial, counsel for the Respondent, David Barber (Barber) attempted to question Burmleve about the actions and thoughts of Jurado.[32] I sustained counsels for the General Counsel, Elizabeth Cortez (Cortez), and the Charging Party, Brad Wartman (Wartman) objections to Brumleve's testimony about what Jurado knew and the actions she took regarding the RFIs at issue. (Tr. 839–856.) Subsequently, Barber moved to waive the privilege previously asserted regarding the Respondent's grievance intake forms, notes, and documents submitted by each grievant (including direct communications to the Union by the grievant) in order to refresh Brumleve's recollection. (Tr. 867–868, 880, 882–884; GC Exh. 3(c) at 2, GC Exh. 4(c) at 2.) Cortez objected, and argued that because the Respondent failed to provide the documents pursuant to the General Counsel's subpoena "[i]t cannot now be used to benefit Respondent to refresh a witness's recollection." (Tr. 868–869, 871–872, 874.) I reminded counsel for the Respondent that if it "waives the privilege with regards to these grievant forms and any notes attached and the argument could be made in the future that the Respondent can no longer claim that privilege on some future cases because they've already waived that privilege." (Tr. 873.) The Respondent, through its counsel, acknowledged the risk. Wartman emphasized that the Respondent's actions have prejudiced the Charging Party's case because "we've had what, four witnesses up, three witnesses up that have testified without the benefit of that. Now he wants to bestow upon his witnesses that benefit and deny us of the same opportunity." (Tr. 875–876.)

Considering the Respondent's decision, through counsel, to waive its privilege regarding the documents, I ordered the Respondent to turn over the documents in question to Cortez and Wartman for them to review. Further, I informed the parties that I would revisit the issue the next day. On the second day of the administrative trial, the counsel for the General Counsel withdrew its objection to allowing the Respondent to waive its privilege and use the documents at issue to refresh the recollection of Brumleve. (Tr. 892–893.) Although the Respondent was initially prepared to unconditionally waive its privilege, Barber later proposed a protective order allowing waiver of the privilege for this proceeding but not allowing the documents and information to be used in any other proceedings. (Tr. 897.) However, the Charging Party argued that after reviewing the documents it believed they are not privileged materials and the documents "undermine" the Respondent's case. (Tr. 896.) Moreover, the Charging Party stated that the proposed protective order should be rejected and the privilege considered waived because: the Respondent initially waived its "privilege" without restriction; the Respondent has not proffered a legal basis for the "privilege"; the Respondent did not produce a privilege log to support the claim of privilege in the subpoena response, thus waiving the privilege; and the need to share with its client the contents of the "privileged" materials in order to assess its position in this proceeding outweighs the Charging Party's false claim of privilege (and presumably protection of the documents under the work product doctrine). (Tr. 899–905.) After considering the parties' arguments, I ruled that in waiving its privilege regarding the documents and communications described above, the waiver was limited to this administrative trial and the parties were not allowed to reveal the documents and communications and any information discovered from those materials to anyone other than those individuals identified on the record, (Tr. 908–910, 1058–1064). Additionally, I placed those documents and the testimony regarding those documents under seal; and granted the Respondent's motion for a protective order. The General Counsel and the Charging Party voiced their continued objections to my rulings.

Based on a careful review of the evidence, case law, the Federal Rules of Evidence, and the parties' arguments, I have reconsidered and hereby rescind my rulings that: (1) allowed a limited waiver of the Respondent's "privilege" regarding the documents and communications at issue; and (2) placed the documents and

[30] The convention services department's name has been changed to the event setup department. (Tr. 146–147.)

[31] King testified that the grievance was deficient because there was not enough information included to allow the Charging Party to: search for video footage of the incident, and if available, save it; evaluate the Charging Party's potential financial exposure; and contact the subcontractors involved in the grievance to ascertain if the subcontractor had performed bargaining unit work in violation of the CBA.

[32] The Charging Party did not call Fatima Jurado to testify at the administrative trial. (Tr. 873–874.)

testimony under seal while granting the motion for a protective order.

It is well settled law that the party asserting confidentiality has the burden of proof. *Postal Service*, 356 NLRB 483 (2011); *Detroit Newspaper Agency*, 317 NLRB 1071 (1995); *Northern Indiana Public Service Co*., 347 NLRB, 211 (2006). Even if the Respondent meets its burden, it cannot simply refuse to furnish the information, but rather must engage in accommodative bargaining with the Union to seek a resolution that meets the needs of both parties. In *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities, the Board explained:

> Confidential information is limited to a few general categories that would reveal, contrary to promises or reasonable expectations, highly personal information. *Detroit Newspaper Agency,* 317 NLRB 1071, 1073 (1995). Such confidential information may include "individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits." Id. Additionally, the partying asserting the confidentiality defense may not simply refuse to furnish the requested information, but must raise its confidentiality concerns in a timely manner and seek an accommodation from the other party. Id. at 1072.

The disclosure of the information must be balanced against the confidentiality and privacy interests raised by the Respondent. *Detroit Edison Co*., supra.

The record reveals that initially the Respondent moved to unconditionally waive its privilege regarding the documents and communications at issue. Only later, after extended on and off the record discussions, did the Respondent changed its position. Second, the Respondent admits that in response to the General Counsel's subpoena requests, it failed to provide a privilege log to support its claim of privilege as required. Third, by waiving the confidentiality privilege in this forum, Board law holds that the privilege may also be waived in other proceedings. See *Wal-Mart Stores, Inc.,* 348 NLRB 833, 834 (2006). Moreover, the Respondent has failed to present persuasive case law supporting a finding that the documents and materials are in fact privileged or protected under the work product doctrine. Last, courts generally find waiver of privilege and work product protection when a witness has reviewed the subject documents during the hearing to refresh his or her recollection. See 28 Fed. Prac. & Proc. Evid. § 6188 (2d ed. April 2019 Update); and 5 Handbook of Fed. Evid. § 612.2 (8th ed. Nov. 2018 Update); Federal Rules of Evidence (FRE) 612. Such is the case in the matter at hand.

Accordingly, based on a careful consideration of the evidence, the parties' positions, and Board and case law, I am rescinding my previous rulings in this matter.

B. Legal Standards

The Board has consistently held pursuant to Section 8(b)(3) of the Act, a union has a duty to furnish information which parallels that of the employer under Section 8(a)(5) and (1) of the Act. *California Nurses Assn.*, 326 NLRB 1362 (1998), citing *Firemen & Oilers Local 288 (Diversity Wyandotte)*, 302 NLRB 1008, 1009 (1991); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 (1990)); *Teamsters Local 851 (Northern Air)*, 283 NLRB 922 (1987); *Local 13, Detroit Newspaper Printing (Oakland Press)*, 233 NLRB 994, 995–996 (1977), affd. 598 F.2d 267 (D.C. Cir. 1979) (holding that where a union refused to disclose requested information about its referral system, it violated Sec. 8(b)(3)). Consequently, a union has a statutory obligation to furnish an employer with relevant requested information so that an employer can assess the merits of the grievances to determine whether to proceed to arbitration or attempt to resolve them. Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Fawcett Printing Corp*., 201 NLRB 964 (1973); *Southern California Gas Co*., 344 NLRB 231, 235 (2005). If the requested information is not directly related to 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), enfd. 160 F.3d 14 (D.C. Cir. 1998); *Brooklyn Union Gas Co*., 220 NLRB 189 (1975).

The standard for establishing relevancy is the liberal, "discovery-type standard." *Alcan Rolled Products*, 358 NLRB 37, 40 (2012), citing and quoting applicable authorities; *Shoppers Food Warehouse Corp*., 315 NLRB 258, 259 (1994); *Bacardi Corp*., 296 NLRB 1220 (1989). In *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992), the Board summarized its application of the principles as:

> [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). Moreover, the Board does not assess the merits of the underlying dispute to determine the relevancy of the request for information. *Postal Services*, 332 NLRB 635 (2000). The Board has also held that a union, and presumably an employer, may make a request for information in writing or orally. Further, the Board has found that 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).

Once the Charging Party has demonstrated the relevancy of the request for information, the burden shifts to the Respondent to establish that the information is not relevant, does not exist, or some other valid and acceptable reason could not be furnished. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995), citing

Somerville Mills, 308 NLRB 425 (1992), and *Postal Service*, 276 NLRB 1282 (1985). Based on the evidence, I find that the Respondent has failed to sustain its burden.

C. The Requests Were Relevant

In its posthearing brief, the General Counsel does not address each alleged RFI violation separately but rather argues: the Charging Party's requests were relevant; the Respondent failed to furnish a valid justification for its failure and refusal to produce the requested information; and the Respondent failed to bargain with the Charging Party over an accommodation to resolve the Respondent's privilege claim. The Charging Party argues that the Respondent's failure to produce the requested information prohibited the Charging Party from being able to "evaluate the merits of the claims and determine whether to settle grievances before arbitration"; and inhibits the Charging Party's ability to defend itself in arbitration. (CP Br. 5, 12.)

The Respondent counters that it did not violate the Act as alleged in the complaint because (1) the Charging Party's RFIs were made in bad faith; (2) the Respondent did not have the information when it responded to the RFIs and did not have a duty to find the information; (3) the Charging Party's RFIs were burdensome; (4) the Respondent had a valid claim of privilege over certain materials and did not have a duty to provide a privilege log; (5) a Charging Party witness (King) was not credible; (6) the actions of the Charging Party's agents (King and Bircanin) shows it was able to sufficiently investigate the grievances "even in the absence of the information it request[ed] from the Union"; and (7) the Respondent's "inadvertent" failure to provide some of the information does not violate the Act. (R. Br. 19–23.)

I find that the information sought by the Charging Party for each of the RFIs is sufficiently relevant and necessary for it to evaluate and investigate the grievance allegations; and prepare for the grievance-arbitration process that was initiated by the Respondent. 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. *Ohio Power Co.*, 216 NLRB 987 (1975); *Leland Stanford Junior University*, supra. Moreover, the Respondent does not dispute the relevancy of the requests but rather objects to them on other grounds. Consequently, the burden shifts to the Respondent to establish that the requested information does not exists or posit other valid reasons for its delay and/or failure to comply with the requests for information.

D. The Respondent Fails to Meet Its Burden

a. Respondent argues RFIs were issued in bad faith and burdensome

Despite the Respondent's contention to the contrary, I find the record is devoid of evidence proving that the Charging Party submitted the RFIs in retaliation for the Respondent filing unfair labor practice (ULP) charges. The Respondent points to an incident between King and Foran as proof of the Charging Party's bad faith. According to the Respondent, King threatened Foran with, "well, you're not going to like what comes next" because the Union refused to withdraw an ULP. (Tr. 731–732.) Moreover, the Respondent argues that the alleged incident should be accepted as fact because "King was present at the hearing but did not rebut Foran's testimony that he issued this retaliatory threat." (R. Br. 19.) The Respondent insists that soon after this confrontation, the Charging Party began to send it lengthy requests for information. The Respondent also argues that the Charging Party's switch from an informal exchange of information to a detailed formal written request is more evidence of bad faith.

The Charging Party counters that this is a specious argument because the Respondent "when initially responding to HRC's information requests, does not assert that the requests are made in bad faith or to vex and annoy the Union." (CP Br. 44.) Rather, according to the Charging Party, the Respondent simply claimed that it did not respond to certain information requests because it did not possess the information and could not otherwise obtain it without an undue burden on its resources.

Even assuming as true that the confrontation with King and Foran occurred as described by the Respondent, it is insufficient proof that the Charging Party issued the RFIs in bad faith. I have found that the RFIs were relevant and necessary. There is credible undisputed testimony that because of the substantial increase in grievance filings, the Charging Party hired Bircanin to implement a better and more standardized system for the Hotel's response to and submission of RFIs. Consequently, Bircanin devised the current RFI system to ensure that information on all incoming grievances was received timely so that the Charging Party could conduct a quick and thorough investigation of the allegation. According to Bircanin, timely receipt of as much relevant information as possible would allow the Charging Party to assess the merits of the grievance, thus reducing its financial liability by quickly resolving those that have merit and/or implementing solutions to ensure that the actions which led to those grievances with merit would not reoccur. Last, I find that the Respondent has failed to show there is a direct cause and effect between the incident with King and Foran and the Charging Party's decision to issue RFIs in the specific grievances in this case.

The Respondent also argues that the voluminous and detailed nature of the RFIs shows that they were issued in bad faith. According to the Respondent, during the early stages of the grievance process, the grievant may possess information known only to him or her and not initially shared with the Union. Consequently, the Respondent insists that at the time it receives the RFI, it often does not have possession of the information. The Respondent claims that in order to comply with the detailed nature of the RFIs, the Respondent would have to revamp its intake grievance process and conduct more extensive interviews when the grievance is first filed. The Respondent argues that, "if the Union were to engage in additional investigations of every grievance when each grievance was at its earliest stage … the Union's limited resources would be overwhelmed." (R. Br. 26.) In order to use its limited resources effectively, the Respondent insists it waits until the grievance meeting to conduct additional grievant interviews because to do otherwise would require a lot more effort to contact the grievant. I find the Respondent's arguments unpersuasive. While the Charging Party's RFI is detailed, there is only the Respondent's subjective opinion that the RFIs are also voluminous. Even assuming that the RFIs are voluminous and would require the Respondent to expend additional resources to gather the information, it does not establish that the RFIs are overly burdensome or issued in bad faith. I have already found

that the RFIs are relevant and necessary. Moreover, the party asserting that responding to relevant RFIs is unduly burdensome or oppressive must show that compliance with the request would seriously disrupt its normal business operations. *Safeway Stores v. NLRB*, 691 F.2d 953, 957 (10th Cir. 1982) (holding company's time and cost burden does not prevail over union requesting information); *Oil, Chemical & Atomic Workers Local Union No. 6-418 v. NLRB*, 711 F.2d 348, 363–364 (1983) (holding that, "…[T]he cost and burden of compliance ordinarily will not justify an initial, categorical refusal to supply relevant data."); *NLRB v. George Koch Sons, Inc.*, 950 F.2d 1324, 1339–1340 (7th Cir. 1991) (holding that even a substantial time and money burden does not excuse duty to disclose); *West Penn Power Co. v. NLRB*, 394 F.3d 233, 245–246 (4th Cir. 2005) (reasonable efforts to obtain outside information is not an undue burden). The Respondent has failed to sustain its burden.

Likewise, the Respondent insists two grievances filed against the Charging Party for taking disciplinary action against Navarro and Kizer is further evidence that the RFIs were issued in bad faith. (Tr. 483–484; R. Br. 21.) As the issuer of the disciplines, the Respondent argues, in this instance, the Charging Party had most of the answers it was seeking from the Respondent. I find, however, that the Respondent's argument is flawed. The Charging Party admits that it had a fair amount of information about the grievance alleging Kizer was unjustly disciplined. However, the Charging Party explained that clarification of the grievant's basis for the claim would enable it to ascertain whether to settle it and, if warranted, implement a process to ensure this type of action did not reoccur. Despite the Respondent's contention to the contrary, I find the Charging Party did not have the answer to one of the most crucial questions, why Kizer believed her discipline was unjust. Moreover, the record is clear that when it received the RFI, the Respondent had possession of the grievant's intake form which included the requested information. Although Bircanin admitted that she was "somewhat" aware of the facts surrounding Navarro's discipline, the evidence does not show that the RFI was unnecessary or unreasonable. Even after conducting an internal investigation, Bircanin still needed more information from the Respondent because her investigation uncovered inconsistencies with the initial grievance allegation, which she was unable to reconcile because the grievant did not list the names of the alleged violators. The Board has consistently held that certain information, such as the basic facts of a grievance filing, is presumptively relevant and therefore, necessary for the requesting parties' ability to carry out its representational duties as either an employer or union. *United Parcel Service of America*, 362 NLRB 160, 161–162 (2015) (information on an employee's terms and conditions of employment is presumptively relevant); *Disneyland Park.*, supra (employer violation of 8(a)(1) and (5) because requested information unnecessary to carry out representational obligations); *Southern California Gas Co.,* supra (holding that the company violated 8(a)(1) and (5) by not providing information relevant to CBA).

The Respondent also claims that King's testimony detailing the reasons he needed the RFIs are false and further evidence of bad faith on the part of the Charging Party. Moreover, the Respondent contends that King's testimony at the hearing should be rejected because his demeanor was untruthful, and the responses were evasive. In support of its argument, the Respondent points to the language contained in the RFIs which states, "These timely and complete disclosures are not only required by law, but are needed by the Hotel in order to adequately investigate the basis of the Grievant's claims and preserve relevant evidence." (R. Br. 22; GC Exh. 3(c).) According to the Respondent, this reason is pretextual because until 2015 the Charging Party was able to investigate grievance claims without submitting RFIs. Further, the Respondent contends that the grievance gives King enough information for him (or presumably other management officials) to "quickly" determine for himself the answer to the RFI. Last the Respondent notes that Bircanin gave "lengthy" testimony about her ability to investigate the grievance allegations "even in the absence of the information [the Charging Party] request[ed] from the Union." (R. Br. 23.) I find that the Respondent's arguments are not persuasive.

While I find that King was only a partially credible witness, his lackluster performance as a witness does not negate the other elements of the General Counsel's case which disprove the allegation that the RFIs were issued in bad faith.[33] *Jerry Ryce Builders, Inc.*, 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951); *Golden Hours Convalescent Hospitals*, 182 NLRB 796, 798–799 (1970). Again, it must be stressed that I have found the RFIs requested relevant and necessary information. Despite the Respondent's contention that until 2015 the Charging Party was able to investigate grievances without submitting RFIs there is no evidence in the record to support that assertion. Even assuming until 2015 the Charging Party was able to investigate with only the information provided in the grievance, the evidence is undisputed that the circumstances later changed with the dramatic increase in grievance filings by the Respondent. I found that the evidence established that it was this increase which necessitated that the Charging Party institute a more formalized procedure for handling the incoming grievance filings. Moreover, Bircanin provided credible and consistent testimony about the need to implement a new system for processing the dramatic increase in grievance filings, the steps she took to investigate the validity of the grievances without responses to the RFIs, and the relevancy of the RFIs. I credit Bircanin's testimony because (1) she provided credible corroborating testimony; (2) even the Respondent admits that the Charging Party's ability to investigate the claims without the responses to the RFIs does not negate the Respondent's obligation to provide the requested information; and (3) Bircanin's overall demeanor while testifying appeared truthful and she provided testimony that was logical and consistent with the corroborating documents of record. Consequently, even if I were to discount King's testimony, Bircanin credibly testified to the same points

[33] I find that, while testifying, several times King appeared to tailor his answers to what he thought counsel for the Charging Party wanted him to say rather than the truth. Moreover, several of his answers on cross-examination were evasive and non-responsive. (See e.g., Tr. 494–495, 509–510, 513–514)

as King regarding: the need for the RFIs; the degree to which the Union's delay or refusal to respond to the RFIs restricted her ability to conduct thorough and meaningful investigations of grievances; and the impact the Union's actions had on the Charging Party's ability to respond to and/or resolve the grievances. Consequently, I do not find the Respondent's arguments persuasive on this point that the Respondent's articulated defense that it was not obligated to respond to the RFIs because they were issued in bad faith is not supported by the evidence.

b. Respondent argues lack of answers, no obligation to conduct burdensome investigations, and no duty to conform RFI to a specific form relieves it of liability

The Respondent also argues that it did not violate the Act when it failed to respond to the Charging Party's RFIs because (1) it did not have the answers when it responded to the requests; (2) the Respondent did not have an obligation to conduct additional interviews with grievants who may have withheld some information during the initial grievance intake interview; (3) getting information from grievants after the grievance is filed but before a grievance meeting is held would be an undue burden on the Respondent; (4) responding to the RFIs would require the Respondent to make changes in how it conducts grievance investigations and takes "significantly more staff time than [its] current process"; and (5) the Charging Party cannot determine how the Respondent provides the requested information. I find, however, that the Respondent has not satisfied its burden of showing that it did not have to respond to the RFIs because it did not have the answers and the RFIs were burdensome. Furthermore, the Respondent has not established that the burden of complying with the RFI outweighs the Charging Party's need for the information.

Although the Respondent argues that it did not have a duty to gather information not in its possession when it received the RFIs, the law does dictate that it must either supply the information in a timely manner or adequately explain why the information will not be provided. *Regency Service Carts, Inc*., 345 NLRB 671 (2005); *Beverly California Corp*., 326 NLRB 153 (1998). I have found that the Respondent did not, once received, furnish the information in a timely manner nor adequately explain why the information could not be provided. As discussed in more detail below for each RFI, there were several instances where the Respondent possessed some or all of the information prior to receiving the RFI. The Respondent argues that King and Bircanin had enough information to understand the basis of the grievance and could have conducted an independent investigation to get additional information. Respondent cites no Board or case law to support its argument that based on the limited information contained in the grievance, the Charging Party should have been able to guess at the answers to its RFI and gather the information it sought. In *Holyoke Water Power Co*., 273 NLRB 1369 (1985), the Board held, ". . . the availability of information from another source does not alter a party's duty to provide relevant and necessary information that is readily available." *NACCO Material Handling Group*, 359 NLRB 1192 (2013) (the Board upheld the administrative law judge's finding that requiring the union to obtain information from another party does not relieve the employer from its obligation to provide to the union the relevant and necessary information). Based on the Respondent's argument, the burden should shift to the Charging Party to obtain presumptively relevant information to its own RFI. The argument is not supported by Board law. It is well settled Board law that the fact that the requesting party is able to obtain information through other sources does not negate the requesting party's right to get the information from the other party. See, e.g., *Illinois-American Water Co*., 296 NLRB 715 (1989), enfd. 933 F.2d 1368 (7th Cir. 1991); *Interstate Food Processing*, 283 NLRB 303, 305 (1987). Moreover, the facts unequivocally establish that the Respondent had a sizable portion the information readily available in the alleged "privileged" grievance intake forms. Moreover, the facts clearly show that the Respondent did not make a valid attempt at an accommodation. *Beverly California Corp*., 326 NLRB 153, 157 (1998); *Bryant & Stratton Institute*, 321 NLRB 1007, 1044 (1996), enfd. 140 F.3d 169 (1998) (Board law to support its contention).

The Respondent insists that requiring it to conduct additional interviews with grievants prior to the grievance meetings would be an undue burden on the Respondent; and the Charging Party should not be able to dictate how the Respondent provides the requested information. According to the Respondent, this would result in an unreasonable strain on its resources because the Respondent would have to arrange for additional grievant interviews; and "most" grievants are difficult to contact by telephone or through shop stewards. I reject the Respondent's arguments because they are not supported by the evidence or law.

The Board has held, "(where) an employer declines to supply relevant information on the grounds that doing so would be unduly burdensome, the employer must not only reasonably raise this objection with the union but substantiate its defense." *AK Steel Corp*., 324 NLRB 173, 184 (1997), quoting *A-Plus Roofing, Inc*., 295 NLRB 967, 972 (1989), quoting *J. I. Case Co. v. NLRB*, 253 F.2d 149, 154 (7th Cir. 1958). Even assuming the Respondent can show that compliance would be unduly burdensome, it must "offer to bargain about sharing theses costs." *AK Steel Corp*., 324 NLRB at 184. In its answer to the complaint, the Respondent raised as an affirmative defense "the Charging Party has endeavored to require Respondent to provide information in written rather than oral form, which is significantly more burdensome to Respondent." (GC Exhs. 1(i), 1(l).) The Respondent contends that the Charging Party could have received the requested information by questioning grievants in grievance meetings. According to the Respondent, the Charging Party refused to participate in or delayed grievance meetings. I do not find the Respondent's argument persuasive. The evidence is insufficient to establish that responding to the RFIs would be an undue burden on the Respondent. The only evidence the Respondent presented to support its undue burden argument were assertions about lacking the staff to contact grievants for and conduct additional interviews after the initial grievances are filed. The Respondent argues that contacting and interviewing grievants separate from the grievance meetings "could take well more than an hour", it would have to reassign staffs' responsibilities, and "neglect its other representational duties." (R. Br. 27.) However, there is no objective evidence to support these assertions. There is also no evidence that the Charging Party is insisting that the Respondent gather the requested information via

follow-up interviews with the grievants. The Charging Party has not demanded that the Respondent produce the information in a specific form[34] or gather the information in a particular manner. Moreover, the Respondent has other option for obtaining the information e.g., assign a staff person to conduct intake interview with grievants, warn grievants that failure to provide a complete narrative of the complaint and supporting documents may result in the delay or dismissal of their grievance, obtain contact information for grievants at the time the grievance is filed. If the Respondent had engaged in the accommodative process as required by law, the parties may have discovered a solution allowing the Respondent to provide the requested information in a manner that was amenable to it.

Based on the evidence, I find the Respondent's affirmative defenses unpersuasive.

c. Respondent illegally failed and refused to respond to the RFIs

It must first be noted the evidence is undisputed that the Respondent never produced a privilege log for any of the requests made in this complaint. Again, I must emphasize that the information sought by the Charging Party in each of the RFIs is necessary for and relevant to the Charging Party's ability to assess the merits of the grievance and its likelihood of succeeding at arbitration, prepare for arbitration, and determine its potential financial exposure. *Local 13, Graphic Communications Union,* 598 F.2d at 273 (employer entitled to the requested information to determine whether to "stand firm on its proposal … modify them . . . or abandon them.").

Regarding the October 9, 2017,[35] RFI both initial and follow-up, were reasonable and necessary to the Charging Party's ability to carry out its responsibilities in the grievance process. The plain reading of the initial grievance shows that it is vague regarding the specific dates, action, and people involved in the alleged violation. The Respondent does not deny that it failed to completely comply with the Charging Party's initial RFI. Instead, the Respondent answered with specific dates (September 21 and 28, 2017) but nothing more. Even after the Charging Party renewed its RFI, the Respondent refused to turn over the information and instead told the Charging Party that it would possibly receive additional information as the Respondent investigated the complaint at each stage of the grievance procedure, including arbitration. There is no case law which states the Respondent can produce requested information at its leisure. *NLRB v. Ingredion*, 930 F.3d 509, 518 (D.C. Cir. 2019) (holding that company violated 8(a)(1) and (5) by causing unreasonable delay during grievance procedure); *IronTiger Logistics v. NLRB*, 823 F.3d 696, 699–700 (D.C. Cir. 2016) (affirming Board's holding that company must respond to requests for additional information in a timely fashion).

Likewise, the Respondent did not fully comply with the RFIs dated October 12, 13, and 17, 2017.[36] In response to the October 12, 2017, RFI the Respondent answered that the grievant claimed on October 3, 2017, his workload increased; and later added that it would provide more information as it was gathered in the course of its continuing investigation. The only information given to the Charging Party was the grievant's name and a three-word description of the allegation. However, the Respondent had the grievance intake form which described the allegation in more detail and listed witnesses' names. (U. Exhs. 4, 5.) The Respondent also failed, without a valid defense, to fully answer the October 13 and 17, 2017 RFIs. Its response to the Charging Party was the addition of the word "violent." The Respondent failed to provide readily available basic information noting the managers' and grievant's names which were listed on the grievance intake form. (U. Exh. 6.)

Prior to receiving the December 18, 2017,[37] RFI, the Respondent had some of the information, but refused to give it to the Charging Party, arguing the material was protected under a labor relations privilege. However, the Respondent had readily available a named witness, and a description of the specific job classification at issue which were not privileged. Neither were given to the Charging Party until almost a year later. (U. Exh. 7; Tr. 992–994.)

In response to the RFI dated December 22, 2017,[38] the Respondent elaborated noting that "on December 4th management asked over 20 housekeepers to do overtime…." (GC Exh. 7(c).) However, the Respondent has not provided additional information, including the name of the grievant, even though the grievance has been pending for almost 2 years. The Respondent did not posit reasons, other than its previously articulated affirmative defenses, for its failure to comply with the RFI. As discussed previously in this decision, I found each of those defenses unpersuasive.

Likewise, the Respondent had a plethora of information when it received the RFI dated January 31, 2018, for grievance number 20180153. Nevertheless, the Respondent refused to give the Charging Party the requested information arguing that the grievance intake form was protected by a labor relations privilege and protected under the work product doctrine. Even assuming the Respondent's argument is supported by case law, the information contained on the grievance intake form is not privileged nor otherwise protected. Consequently, the Respondent had readily available to it a lot of the information requested by the Charging Party (e.g., bases for the grievance, witness names, time of events, shifts at issue, etc.) which could have been communicated to the Charging Party without giving it access to the form. (U. Exh. 9.)

In response to the Respondent's complaint that its RFI dated March 12, 2018, was unreasonable and unduly burdensome, on March 27, 2018, the Charging Party revised its RFI.[39] (GC Exh. 9(c) at 9.) I find that the record shows the Respondent partially responded to the RFI, albeit about a year after it was requested.

[34] The Charging Party does ask that the Respondent's answers to the RFI be submitted in writing. However, the record is devoid of evidence establishing why producing the information in written format would be unduly burdensome.

[35] The RFI was issued in response to grievance number 20172063.

[36] The RFIs were issued in response to grievance numbers 20172102, 20172103, and 20172111, respectively.

[37] The RFI was issued in response to grievance number 20172598.

[38] The RFI was issue in response to grievance number 20172701.

[39] The RFI was submitted to the Respondent in response to grievance number 20162235. (GC Exhs. 9(a)–(c) attachment.)

(GC Exh. 9(c) at 6–7.) However, the Respondent's argument that because it provided photographs the Charging Party should be able to correctly guess the identities of the employees the Union is referring to even though they are listed by first names only does not meet its legal obligation to answer the RFI. In several instances the Respondent also failed to confirm the names of manager involved in the disputes, locations of the alleged violations, and the type of bargaining unit work allegedly performed in violation of the CBA.

The Respondent admits and I find that it never responded to the RFI dated March 13, 2018. The Respondent knew that grievance number 20171930 was never filed with the Charging Party and administratively closed by the Union. (GC Exh. 10(a)–(c); Tr. 858–861.) Despite the Charging Party's repeated requests for a copy of the grievance, the Respondent never explained it had administratively closed it without filing it with the Charging Party. The Respondent contends it met its obligation to respond to the RFI when it gave the Charging Party a list of open grievances which did not include grievance number 20171930. I reject this argument. The Charging Party was not required to guess, assume, or surmise that the absence of grievance number 20171930 on the list of open grievances meant it had been administratively closed. It is just as likely that the grievance's absence from this list could have been an error. Confirmation from the Respondent regarding the grievance's status would have eliminated alternate scenarios.

On several occasions the Charging Party attempted to conduct investigations after being served grievances. There were also instances when the Charging Party had independent knowledge about the events surrounding some of the grievances. In response to RFIs dated March 20 and 29, 2018,[40] the Charging Party either initiated an investigation prior to receiving a response to the RFI or was aware of many facts about the incident because its managers were responsible for issuing discipline against an employee. Nevertheless, there were facts the Charging Party was unable to uncover without the information it requested from the Respondent. Despite its assertion that it had given to the Charging Party all facts known to the Respondent, the Respondent withheld the grievance intake form, notes, and a privilege log arguing that the information was covered by a labor relations privilege and/or the documents contained protected work product. In response to the March 20, 2018 RFI, the Respondent did not provide the name of the witness on the intake form or a picture of the text message from a supervisor about the incident. (U. Exh. 12; Tr. 157–158, 1003, 1005.) Moreover, regarding the RFI submitted on April 10, 2018,[41] it is undisputed that the Respondent's answer to the RFI was incomplete; but the Respondent insists all the information it possessed when it received the request was given to the Charging Party. In each instance, however, the evidence establishes that the Respondent failed to communicate to the Charging Party the detailed narrative from the grievants explaining the underlying facts. Those forms contained, among other facts, witnesses' names and reasons why the grievant believed the CBA was violated. The Respondent had the grievants' narrative prior to being served the RFIs. The Respondent does not provide a persuasive argument or point to Board precedent to support a finding that the facts included or attached to the intake forms are privileged or protected under the work product doctrine. See *Upjohn Co*., 449 U.S. 383, 395 (1981) (party cannot conceal underlying facts contained in privileged communications); *City of Philadelphia v. Westinghouse Electric Corp*., 205 F.Supp. 830, 831 (1962) ("the [attorney-client] privilege extends only to communications and not to facts"). Finally, there is no evidence that Respondent made any attempts at engaging the Charging Party in accommodative bargaining to provide it with the underlying facts without giving it the intake forms.

Regarding the RFI dated April 9, 2018, that the Charging Party issued in response to grievance number 20171159, the Respondent again insists that when the Charging Party made its request for information the Respondent provided all the information it possessed at the time. The Charging Party asserts, however, that the evidence shows that the information the Respondent gave it on April 12, 2018, had been available to the Respondent since about October 7, 2017, and February 28, 2018. The Respondent failed to provide persuasive evidence to the contrary.

On April 16, 2018, the Charging Party sent a RFI in response to grievance number 20180751 requesting facts and supporting documents from the Respondent on the grievant's reasons for alleging "unjust discipline." The RFI also sought notes taken by the grievant, steward, and union representative and whether the Union complied with step one of the grievance process. (GC Exh. 15(b).) The Respondent admits that it closed the grievance because it determined that the grievance was untimely. According to the Respondent, it notifies an employer that a grievance is closed either by sending the employer a list of open grievances or when a grievance settles. The Respondent argues that there "were misunderstandings on both sides about [the grievances'] status and about how their status was to be communicated, but there was no prejudice to Hyatt in the Union's silence because the grievances were not being pursued." (R. Br. 15.) The Union's silence, however, is not a legally sufficient justification for failing to respond to the Charging Party's necessary and relevant RFI. *General Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983) (holding that an employer violates 8(a)(5) when it withholds information relevant to union processing grievances).

The RFIs dated April 23 and 30, 2018,[42] were in response to grievances alleging improper scheduling of employees and improper distribution of gratuities to the detriment of "American Craft Hostesses." The Union also alleged that the Charging Party "improperly sent [Fatima Ibrahim] home and lodged another charge of improper scheduling of employees. (GC Exhs. 17(b), 18(b).)

The April 23, 2018 RFI asked for, among other items, an explanation of the bases for the allegations that gratuities were

[40] The RFIs were submitted to the Respondent in response to grievance numbers 20180538 and 20180662, respectively. (GC Exhs. 11(a)–(b); 12(a)–(b).)

[41] The RFI was submitted to the Respondent in response to grievance number 20180692. (GC Exhs. 14(a)–(b).)

[42] The RFIs dated April 23 and 30, 2018, were submitted in response to grievance numbers 20180794 and 20180822.

improperly distributed, to identify the nature of the grievance, specific date of the alleged violation, notes, and all documentation relied on in its decision to file the grievance. (GC Exhs. 17(b), 18(b).) On April 30, 2018, the Charging Party renewed its request, and asked for specific information about the details of Ibrahim's termination. The Respondent's argument for each grievance is essentially the same: it gave the Charging Party all the information it had when it received the RFIs; and refused to produce its grievance intake forms and other notes made by its staff and shop stewards arguing that they are privileged or protected under the work product doctrine. I dismiss the Respondent's arguments. At minimum, the grievance intake form number 20180794 contained more information than the Respondent shared with the Charging Party. The Respondent did not disclose all the information it had when it received the RFI. For example, the intake form listed the names of the employees who filed the grievance on behalf of the hostesses, and that there was a "buy out for Thursday + Friday…." (U. Exh. 19.) Regarding RFIs in response to grievance number 20180822, the evidence is clear that prior to receiving the RFI the Respondent possessed relevant information which it failed to produce. The intake form reveals: the initial of the supervisor that allegedly "yelled" at Ibrahim; and a detailed narrative of the events which includes names and other facts not in the grievance submitted to the Charging Party. (U. Exh. 20.) If the Charging Party had received, at minimum, the grievance intake form it would have had a better understanding of the basis of the grievance thereby allowing management to: conduct a more fact specific investigation in order to corroborate or dispute the claim; assess whether settlement was appropriate; and assess its likelihood of success in arbitration. Second, I have found that the Respondent waived whatever labor relations privileged it might have held regarding the grievance intake form. Moreover, the Respondent failed to identify, and I cannot discern any protected work product on the form. Even assuming a privilege, as previously noted, the underlying facts are not privileged and must be produced.

The RFIs dated April 26 and May 10, 2018,[43] were in response to grievances alleging improper scheduling of banquet servers. The Charging Party argues that it submitted the RFIs because it could not "understand the claims set forth in the grievance …." (CP Br. 36.) Bircanin testified that the grievance allegations were too vague for her to understand and conduct a meaningful investigation. Significantly, the Respondent's counsel also agreed with Bircanin that the grievance description of the allegation was vague. (Tr. 256.) Consequently, it is more likely than not that the Charging Party would need the requested information to: understand with specificity the nature of the grievance; investigate the allegation; prepare for arbitration; assess the strengths and weaknesses of its position; and determine whether to settle the grievance or proceed to arbitration. None of the Respondent's arguments (privilege, work product, or all information possessed at the time) can overcome these considerations. *Earthgrains Baking Companies, Inc.*, 327 NLRB 605 (1999); *Jacksonville Area Assn*., 316 NLRB 338, 340 (1995).

Regarding the RFI dated June 8, 2018,[44] the Respondent posits the same objections it has made for the other RFIs in NLRB complaint. The Charging Party submitted the RFI in response to a grievance filing that "scheduling on or about 5/18/2018 and ongoing and continuing" violated the CBA. Bircanin testified that for her "scheduling" had several meanings (e.g., overtime assignments, start time disputes, denial of days off). Consequently, she submitted the RFI because she felt the allegation of improper scheduling was vague. On June 19, 2018, the Respondent answered, "Grievant claims that on or about 05/17/18 the grievant was improperly being scheduled." (GC Exh. 19(c).) Clearly the Respondent did not fully comply with the RFI despite having much of the information when it received the RFI. The Respondent knew or should have known, among other facts, the exact nature of the scheduling conflict, names of the supervisors involved, names of potential witnesses, and the date the issue was discussed with a supervisor. Moreover, the Respondent, within a reasonable amount of time, should have had the narrative on the grievance intake form translated from Chinese to English and shared with the Charging Party. Based on the reasons stated earlier in this decision, I find that the Respondent's objections are likewise not persuasive on this point.

Regarding the RFI filed on June 28, 2018,[45] the evidence establishes that the grievance submitted to the Charging Party failed to include basic information such as the type of discipline allegedly issued, who issued the discipline, any discussions between management and the employee about the discipline, names of the managers alleged to have taken pictures of the grievant, names of the management officials who have allegedly placed him under increased scrutiny, and any witnesses to the discipline or discussions between management and the employee. This information was relevant and necessary for the Charging Party's ability to "evaluate the merits of the claims and determine whether to settle grievances before arbitration" and prepare to defend itself in arbitration. I find that the Respondent failed to establish a valid reason for its refusal to produce the information.

On June 20, 2018,[46] the Charging Party sent a RFI in response to a grievance which alleged "[s]ub-[c]ontracting on or about 5/30/2018 and ongoing and continuing" in violation of the CBA. (GC Exh. 21(a).) The Charging Party asked for all documentation that the Respondent relied on in its decision to file the grievance, including the grievant(s)', shop steward's, and union representative's notes, names, dates, times, locations, photos, videos, and any other documentation related to the grievance. The Respondent answered, "Grievant claims that on 05/30/18 an outside company was seen moving C.S. equipment. The issue was discussed with management on 06/01/18." (GC Exh. 21(b).) On June 29, 2018, the Charging Party sent a follow-up request asking for, in addition to the initial RFI, duration of the alleged

[43] The RFIs dated April 26 and May 10, 2018, were submitted in response to grievance number 20180867.

[44] The RFI dated June 8, 2018, was submitted in response to grievance number 20181183.

[45] The RFI dated June 28, 2018, was submitted in response to grievance number 20181187.

[46] The RFI dated June 29, 2018, was submitted in response to grievance number 20181209.

violation, name of the employee harmed by the alleged violation, name of the subcontractor, work the subcontractor's employees performed, and dates the work was allegedly performed. Although the Respondent argues that it gave the Charging Party all but privileged information, the evidence reveals otherwise. The Respondent did not give the Charging Party the name of the witness listed on the grievance intake form. Also, the Respondent failed to name the contractor, clarify the date(s) of the incident, and clarify the number of grievants and managers involved in the action. The Respondent does not proffer arguments specific to the June 28 and 29, 2018, RFIs but rather relies on its previously articulated affirmative defenses. Since I have found the information relevant and discredited the Respondent affirmative defenses, I find that the Respondent failed to completely respond to the RFIs and does not have a legally justifiable reason for its actions.

Accordingly, I find that the Respondent's failed and refused to provide the Charging Party with the necessary and relevant information requested by it as described in paragraphs VI(a)–(s) of the complaint in violation of Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent UNITE HERE Local 1 is a labor organization within the meaning of Section 2(5) of the Act and represents over 16,000 employees in the Chicago metropolitan area, downstate New York, and Indiana.

2. The Respondent is, and, at all material times, has been the exclusive bargaining representative for the following appropriate unit:

> All full and regular part-time culinary employees, food and beverage employees, bartenders, housekeeping employees, uniform services employees, and banquet employees employed by Charging Party at its facility located at 151 East Wacker Drive, Chicago, Illinois, but excluding clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

3. Hyatt Regency Chicago (Charging Party) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, operating a hotel in Chicago, Illinois.

4. By its failure and refusal to provide the necessary and relevant information requested by the Charging Party on or about October 9, 12, 13 and 17, 2017, on or about December 18 and 22, 2017, on or about January 31, 2018, on or about March 12, 13, 20, and 29, 2018, on or about April 9, 10, 16, 23, 26, and 30, 2018, on or about May 10, 2018, and on or about June 8, 28, and 29, 2018, the Respondent has engaged in unfair labor practices in violation of Section 8(b)(3) of the Act.

5. By its failure and refusal in providing the necessary and relevant information requested by the Charging Party on or about the dates listed above in paragraph 3, the Respondent has engaged in unfair labor practices in violation of Section 8(b)(3) 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

The General Counsel requests that I order as appropriate remedies for the Respondent's failure and refusal to provide the Charging Party with the requested information in violation of Section 8(b)(3) of the Act: an extraordinary remedy requiring training for Respondent's officials; a Notice posting; and "any other remedy deemed appropriate and just under the law."

I find that traditional remedies are inappropriate in this matter; and I agree with the General Counsel's argument that it is appropriate to order an extraordinary remedy requiring mandatory in-person training sessions for all current organizers and representatives of UNITE HERE Local 1 who are responsible for responding to or advising on information requests made by the Charging Party.

The Respondent will be ordered to cease and desist from failing and refusing to bargain collectively with the Charging Party by refusing to provide the requested information. Moreover, the Respondent will be ordered to furnish the Charging Party with the information requested as specified in paragraphs VI(a)–(s) of the consolidated complaint.

The Respondent will also be ordered to 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[47]

ORDER

The Respondent UNITE HERE Local 1, in Chicago, Illinois, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Hyatt Regency Chicago (Charging Party) by failing and refusing to provide the Charging Party with information requested that is necessary and relevant for its ability to prepare for and/or defend itself against the underlying grievances.

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 Charging Party with the information, as specified in the second consolidated complaint, it has requested since on or about October 9, 12, 13 and 17, 2017, on or about December 18 and 22, 2017, on or about January 31, 2018, on or about March 12, 13, 20, and 29, 2018, on or about April 9, 10, 16, 23, 26, and 30, 2018, on or about May 10, 2018, and on or about June 8, 28, and 29, 2018.

(b) Within forty-five (45) days, the Respondent will conduct two mandatory in-person training sessions for all current organizers and representatives of UNITE HERE Local 1, who are responsible for responding to information requests made by Hyatt Regency Chicago, regarding the requirement to timely provide necessary and relevant information to the Hyatt Regency Chicago upon its request. Such training shall include providing to

[47] 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.

each attendee a copy of this settlement agreement and the attached notice to employees, and written instructions stating that:

• UNITE HERE Local 1 and its organizers and representatives are required, pursuant to a settlement agreement with Region 13 of the National Labor Relations Board, to comply with the appended Notice to Employees;

• Incomplete or inadequate responses, unprivileged or unwarranted refusals, and unreasonable delays in supplying information required to be provided to Hyatt Regency Chicago shall not be tolerated by the UNITE HERE Local 1;

• If the Union claims any information responsive to a request for information from Hyatt Regency Chicago is privileged or confidential, it must notify Hyatt Regency Chicago of the basis of its position and seek to bargain an accommodation to provide the information in a manner that protects its confidentiality interests;

• If the Union claims any other lawful basis for withholding information responsive to a request for information from Hyatt Regency Chicago, it must notify Hyatt Regency Chicago and state the basis for its position;

• If, after a diligent search, the Union finds that requested information does not exist, or is not capable of being produced, the Union must respond to the request by saying so within a reasonable time.

Each person receiving training pursuant to this settlement agreement shall acknowledge in writing that he or she has attended the training and has been furnished with a copy of this settlement agreement, the notice to employees, and written instructions, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation of this settlement agreement.

The Charged Party will notify Region 13 in writing within ten (10) days of conducting each training session and provide a list of attendees and the instructor at each session.

(c) Within 14 days after service by the Region, post at its facilities within the Chicago metropolitan area copies of the attached notice marked "Appendix."[48] Copies of the notice, on forms provided by the Regional Director for Region 13, 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, 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 October 9, 2017.

(d) 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. September 26, 2019

[48] 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."