

Commonwealth Communications, Inc. and International Brotherhood of Electrical Workers Local Union 98, AFL–CIO–CLC. Case 4–CA–25782

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND WALSH

On July 13, 1999, Administrative Law Judge Margaret M. Kern issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed briefs in opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

We reverse the judge's dismissal of the complaint and find that the Respondent violated Section 8(a)(5) and (1) by failing to comply with a request for information from the Charging Party, International Brotherhood of Electrical Workers Local 98. As set forth below, the Respondent's obligation to provide this information is definitively resolved by our finding on the threshold issue—i.e., that the collective-bargaining agreement entered into between the Respondent and IBEW Local 98, by its terms, was unambiguously multisite in scope. Because we reject the Respondent's assertion that the material terms of this agreement were ambiguous, we find that the judge erred in relying on the extrinsic evidence proffered by the Respondent to support its contention that the agreement covered only one construction project.

Background

The judge has provided a comprehensive account of the material facts, which we shall restate to the extent here relevant. The Respondent is engaged in the business of installing and servicing local telephone and telecommunications services in Pennsylvania and New Jersey. On May 1, 1995,² Lombardo and Lipe, a primary electrical contractor in large-scale renovation construction, awarded to the Respondent a telephone-cabling contract

for work at two terminals at the Philadelphia Airport. The airport used an AT&T Systemax telephone system, for which the Respondent was an AT&T-approved vendor, and its employees were trained and certified for that purpose by AT&T. However, because IBEW Local 98 members already performed a significant volume of other work at the airport, Lombardo and Lipe "strongly encouraged" the Respondent to "work with Local 98" on this project.³

At this time, the Respondent had a bargaining relationship with Communications Workers of America Local 13571, confirmed in a succession of collective-bargaining agreements dating back to 1981. Stuart Kirkwood, the Respondent's vice president of operations, testified that he contacted Local 13571 and obtained its agreement for him to use IBEW members to perform the less-skilled, laborer-type work that would be required on the airport project, while CWA members would perform the skilled work. Kirkwood also obtained a copy of Local 98's "Letter of Assent" form through which employers became signatories to Local 98's area collective-bargaining agreement (Commercial Agreement) negotiated with the Philadelphia Division of the Pennsylvania-Delaware-New Jersey Chapter of the National Electrical Contractors' Association (NECA). Kirkwood filled out and signed the Letter of Assent.

The credited testimony establishes that on July 20, Kirkwood and Ed Kovatch, the Respondent's director of employee relations, went to Local 98's office for a meeting with John Dougherty and James Farrow, respectively Local 98's business manager and its business agent. During the meeting, which lasted several hours, Kirkwood proffered Dougherty the copy of the Letter of Assent he had already signed. Kirkwood, Kovatch, and the union officials also reviewed a copy of the Commercial Agreement, page by page. Toward the end of the meeting, Kirkwood was given two new copies of the Letter of Assent to sign, both of which had been filled out by Local 98 staff. One of those copies was in the same format as the one Kirkwood had previously filled out. The other copy was attached to a copy of the Commercial Agreement itself as page 18—i.e., as the signature page of the entire contract. Kirkwood and Dougherty signed both of these copies of the Letter of Assent. The relevant terms of both the Letter of Assent and the Commercial Agreement are reviewed in detail below.

The credited testimony and documentary exhibits establish that the Respondent subsequently employed 20 CWA-represented employees and 18 IBEW-represented employ-

¹ The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Unless otherwise indicated, all dates are in 1995.

³ Lombardo and Lipe was a signatory to the area IBEW collective-bargaining agreement described below.

ees on the airport project, beginning in late July. On January 20, 1997, Local 98 Business Agent Timothy Browne, believing that the Respondent was covered by the IBEW contract for all the work it performed in Local 98's jurisdiction, sent the Respondent a written request for certain specified information—specifically, for copies of documents concerning any and all work performed by the Respondent after July 20, and all the employees it employed in such work. Browne sent this request because he had seen trucks belonging to the Respondent in the Philadelphia area (away from the airport), and he had heard that the Respondent was obtaining employee referrals from a nonunion agency which Philadelphia employers were known to use to recruit non-IBEW employees.

In response to Browne's request, the Respondent provided documents relating solely to the work it performed at the airport. Browne then filed the charge that initiated this matter, alleging a violation of Section 8(a)(5) and (1).

The General Counsel and Local 98 contend that when Kirkwood and Dougherty signed the Letter of Assent on July 20, the Respondent became a signatory to the Commercial Agreement with respect to all work the Respondent performed within Local 98's jurisdiction. The Respondent contends that the agreement it made with Local 98 was strictly limited to the airport project and that Local 98 was therefore not entitled to the requested information regarding other jobsites. As indicated above, the issue effectively turns on whether the terms of the Letter of Assent and the Commercial Agreement, as executed by both parties, unambiguously establish the scope of the collective-bargaining agreement. If the written terms were not ambiguous and extended the scope of the contract to multiple sites, the information requested pertained to matters covered by the agreement and was accordingly relevant. As the judge correctly stated, evidence extrinsic to the written terms of the contract purporting to show that the contract applied only to a single site could properly be considered only if the applicable written terms were ambiguous.

The following provisions in the IBEW's collective-bargaining agreement and the letter of assent provide the basis for our conclusion that the parties unambiguously agreed to a multisite bargaining agreement. Section 1.01 of the Commercial Agreement, which covered the period May 1, 1994 to April 20, 1997, provided that the contract would "remain in effect" for that period "unless specifically provided for herein." Section 2.03(h) provided, in pertinent part:

[I]n order to protect and preserve, for the Employees covered under this Agreement, all work heretofore performed by them . . . it is hereby agreed as follows: If

and when the employer shall perform *any* work of the type covered by this Agreement, under its own name or under the name of another as a corporation, company, partnership, or any other business entity . . . the terms and conditions of this Agreement shall be applicable to *all* such work. [Emphasis added.]

Further, section 2.03(c) provided that:

The Employer agrees to notify the Business Manager of the Union on forms furnished by the Union, of the receipt of all contracts secured within its jurisdiction.

Finally, the last page of the contract (entitled "Geographical Jurisdictional Lines of Local Union 98, IBEW") specified, on a road and county basis, the Local's jurisdiction, which extended to four counties containing and surrounding Philadelphia.

The Letter of Assent stated, in pertinent part:

In signing this letter of assent, the undersigned firm does hereby authorize [the Association] as its collective bargaining representative for all matters contained in or pertaining to the current and any subsequent approved Inside Commercial labor agreement between [NECA] and Local Union 98, IBEW.

The judge found that the language in the Letter of Assent and the Commercial Agreement was ambiguous because it referred to covered work as "electrical work" and "electrical construction work," and the contract contained no further definition of these terms and no listing of specific job classifications. She also found the Commercial Agreement ambiguous because at various points it alternately referred to "members" and "employees" in a manner she found to be inconsistent. On the basis of these ambiguities, the judge found that the parole evidence rule did not bar the consideration of extrinsic evidence for the purpose of determining whether the parties' agreement was limited to the airport project. Based on such extrinsic evidence and on her crediting of testimony given by Kirkwood, the judge concluded that the agreement between the Respondent and Local 98 was restricted to the airport project, and that Local 98 consequently had no basis for requesting information concerning the Respondent's other projects. The judge accordingly recommended that the charge be dismissed.

Analysis

We find, as a preliminary matter, that the judge relied on provisions that are extraneous to the question of whether the agreements pertained to multiple jobsites or just the airport project. Contrary to the judge, the absence of a clear definition of "electrical work" or "electrical

construction work” and some inconsistent references to “members” and “employees” in the Letter of Assent and the Commercial Agreement do not create an ambiguity with respect to whether the *scope* of the parties’ agreement was single-site or multisite. Any arguable ambiguity which may exist regarding those terms pertained solely to the question of which employees on a site would be covered by the agreement and for what type of work. Such ambiguity is entirely irrelevant to the issue of whether the agreement was multisite in scope. Also, with respect to the airport project, there is no indication in the record that the Respondent and Local 98 had any conflicting interpretations concerning the terms the judge found ambiguous, and the Respondent did not base its denial of Browne’s information request on any dispute over the meaning of these terms.

We recognize that the Letter of Assent and the Commercial Agreement do not contain a traditional recognition provision defining the scope of the unit. However, the Commercial Agreement contains unambiguous language that precludes limiting the contract solely to one project. First, section 2.03(h), quoted in full above, provides that when an employer covered by the agreement “shall perform any work of the type covered by this Agreement . . . the terms and conditions of this Agreement shall be applicable to all such work.” The generic reference to “work of the type covered by this Agreement” and the specific extension of the agreement to “all such work,” in the absence of any other express limitation, clearly establish a comprehensive application of the agreement to multisite settings. The Union’s geographic jurisdiction is also specifically defined elsewhere in the contract as covering the four counties comprising the Philadelphia metropolitan area. Further, the provision obligating the employer to notify the union of contracts secured within its jurisdiction would be irrelevant if the agreement were not envisioned as a multisite agreement.

Our dissenting colleague does not dispute that if the agreements are unambiguous as to scope, then the proffered parol evidence need not be considered and the Respondent was obligated to comply with the information requests. However, he asserts that the parties’ agreements were ambiguous, based on additional language in the contract and the letter of assent. Specifically, he cites section 2.09, which provides:

The Employer agrees that, if it has not previously done so, it will recognize the Union as the exclusive collective bargaining agent for all employees performing electrical work within the jurisdiction of the Union on all present and future job sites, if and when a majority

of the Employer’s employees authorized the Union to represent them in collective bargaining.

He also references the following language in the Letter of Assent:

The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the NLRA Section 9(a) collective bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future job sites.

In our dissenting colleague’s view, section 2.09 and the Letter of Assent effectively limit the application of the parties’ agreement to the airport project, with the application to other sites to be conditioned on majority authorization.

However, the foregoing provisions bear not on the *scope* of the initial bargaining relationship but on its *nature*, namely whether the bargaining agreement relating to these construction electricians was an 8(f) agreement or a 9(a) agreement. It is clear that the Respondent and Local 98 entered into their bargaining relationship under a classic “pre-hire” arrangement contemplated by Section 8(f) of the Act, for which the Union was not required to establish majority support. The contractual references to majority support were clearly intended to satisfy the requirements of *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1987), cert. denied 488 U.S. 889 (1988), which established new requirements for an 8(f) representative to achieve 9(a) majority status.⁴

It would be anomalous to override the explicit language denoting multisite work scope with an interpretation that would alter the scope of the unit based on whether some of the employees covered by the “pre-hire” agreement express support for the union that already lawfully represented them. Neither the Respondent nor our dissenting colleague has presented any convincing argument why the scope of the 8(f) bargaining unit should be viewed as ambiguous in light of provisions relevant only for 9(a) purposes, particularly given the language in section 2.03(h).

⁴ Significantly, the Letter of Assent requires the Respondent to recognize the Union, upon majority authorization, as “the NLRA Section 9(a) collective bargaining agent.” Representational status under Sec. 9(a), unlike under Sec. 8(f), requires majority support. Thus, it is reasonable to conclude that the Letter of Assent and the Commercial Agreement required majority authorization only to change the Union’s representational status from Sec. 8(f) to Sec. 9(a), not to establish initial recognition.

We accordingly find that in their totality the provisions addressing the scope of the unit are unambiguous.⁵ It is undisputed that Kirkwood and Kovatch received and reviewed a complete copy of the Commercial Agreement before Kirkwood signed the Letter of Assent.⁶

We agree with the judge that the cases cited by the General Counsel involving the use of letters of assent to bind employers to IBEW-NECA bargaining agreements are not determinative here. In those cases, the terms of the underlying bargaining agreements were not in controversy, whereas the terms of the bargaining agreement are the central issue here. However, the contract terms at issue here have been drafted to apply as a general matter, apparently without controversy, to all employers and employees in the Philadelphia area who are covered by Local 98's Commercial Agreement.

For all of these reasons, we find that the parties' written agreement clearly was not restricted to the airport project, and the judge should not have relied on extrinsic evidence to vary the terms of the written agreement. *America Piles, Inc.*, 333 NLRB 1118 (2001) (where agreements are clear that they are not project agreements, parol evidence could not be introduced to vary their terms); *W. J. Holloway & Son*, 307 NLRB 487, 487 fn. 1 (1992) (extrinsic evidence may be used to "explain or clarify" but not to "invalidate and nullify" parties' written agreement).

Our finding that the Respondent's agreement with the IBEW was not restricted to the airport project bears on the question of whether the General Counsel has the initial burden of establishing the relevancy of the information requested by the Union, which pertained to work performed by the Respondent in the Philadelphia area, within the geographical scope of the Commercial Agreement and the Local's jurisdiction. When a union seeks information pertaining to employees within a bargaining unit, the information is presumptively relevant to the union's representational duties, and the General Counsel may establish a violation for the employer's

⁵ In *Sansla, Inc.*, 323 NLRB 107 (1997), cited by the Respondent, the final written contract contained explicit, project-specific language, and thus we found that the employer was bound only by a single-site agreement.

⁶ The judge and our dissenting colleague place significance on the fact that Respondent's Kirkwood had testified he would not have entered into the agreement with IBEW without CWA's consent, implying that CWA's forbearance was required in view of that existing bargaining relationship. The record establishes, however, that the Respondent was not dependent on CWA's willingness to allow the IBEW to represent some of the Respondent's employees at the airport project. At the time, art. XXIII, sec. 1(1)(A) of the Respondent's agreement with the CWA stated that "this labor agreement and the assignment of work under this labor agreement shall not apply to any new customer or client [except under circumstances not present here]."

failure to furnish it without any further showing of relevancy. *Branch International Services*, 313 NLRB 1293, 1296 (1994).⁷ Whether or not the presumption applies, we apply a "liberal, discovery-type standard" in determining relevancy. *Id.*, citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

Because we have found that the parties' agreement brought the Respondent under the Commercial Agreement and consequently ran to the extent of Local 98's geographic jurisdiction, the information requested by the Union pertained to terms and conditions of employment of employees within the scope of the bargaining unit. This information, therefore, was presumptively relevant, and the Respondent was required to provide it. *Gary's Electrical Service Co.*, 326 NLRB 1136 (1998). The Respondent's failure to do so consequently violated Section 8(a)(5) and (1).⁸

ORDER

The National Labor Relations Board orders that the Respondent, Commonwealth Communications, Inc., Dallas, Pennsylvania, its officers, agents, successors, and assigns or representatives, shall take the following actions:

1. Cease and desist from

(a) Refusing to bargain in good faith with International Brotherhood of Electrical Workers Local 98 (the Union) by failing and refusing to fully comply with or tardily complying with the Union's request for information relevant to and necessary for the negotiation or administration of its collective-bargaining agreement, and necessary for the performance of the Union's representational duties.

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

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

(a) To the extent it has not already done so, immediately comply with the request for information from the Union dated January 20, 1997, with respect to all infor-

⁷ Where information requested is about matters outside the unit that might have a bearing on the employment terms and conditions of the unit employees, the burden is on the General Counsel to prove relevancy in order to establish a violation on the basis of the employer's failure to furnish the requested information. See, e.g., *Reiss Viking*, 312 NLRB 622, 626 (1993), and cases there cited.

⁸ In their briefs, the General Counsel and the Charging Party respectively acknowledge that Browne's information request, dated January 20, 1997, "may have been inartfully drafted . . . and/or overbroad," and "not crystal clear" in scope. Accordingly, in ordering the Respondent to comply with the request, we will require the production only of such information and documents which pertain to work performed by the Respondent within Local 98's geographic jurisdiction.

mation and documents sought pertaining to work performed by the Respondent within Local 98's geographic jurisdiction.

(b) Within 14 days after service by the Region, post at its Dallas, Pennsylvania jobsite and all other sites from which its employees are assigned or referred to work, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 20, 1997.

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

CHAIRMAN HURTGEM, dissenting.

Contrary to my colleagues, I find that the Respondent's failure to furnish requested information did not violate the Act. Rather, I find that the information requested by the Union (IBEW) was not relevant to the unit employees represented by IBEW. As discussed below, the parties' 8(f) agreement was a single-project agreement. By contrast, the IBEW's information request was premised on the assumption that the agreement between Respondent and IBEW covered all other projects performed by Respondent within IBEW's geographic jurisdiction. Inasmuch as I find, in agreement with the judge, that the contract is limited to one project (Philadelphia airport), and inasmuch as the nonsupplied information concerned the Respondent's presence at other jobsites, I would dismiss the 8(a)(5) complaint.

The Respondent has a long-term 9(a) relationship with the Communication Workers of America (CWA), which, until the instant controversy, represented all of the Respondent's employees. On May 1, 1995, the Respondent

was awarded a subcontract to perform telephone cabling work for Lombardo and Lipe, the primary electrical contractor on a large-scale construction project at the Philadelphia Airport. The Respondent was an AT&T-approved vendor for the AT&T Systemax telephone system used at the airport, and its employees had been trained for that purpose by AT&T. At the time, IBEW performed a significant amount of work for other employers at that project. Stuart Kirkwood, the Respondent's vice president of operations, obtained the consent of CWA to use IBEW members for the less skilled, labor-type work on the job. CWA members would perform the more skilled jobs. Kirkland credibly testified that, absent that consent, he would not have entered into the subcontract with Lombardo & Lipe. Kirkland also credibly testified that, at a meeting between representatives of the Respondent and IBEW, he made it clear to the IBEW that the CWA represented the Respondent's employees and that any agreement with IBEW would have to be limited to that airport job. He also told the IBEW, over no objection, that he would divide the work between the CWA employees who were certified on the Systemax system and the IBEW employees who were not. The parties (Respondent and IBEW) signed two Letters of Assent-A and a Commercial agreement. These documents are described below.

On January 20, 1997, IBEW Business Agent Timothy Browne sent the Respondent a written request for copies of documents concerning any and all work performed by the Respondent after July 20, 1995.¹ Browne testified that his request was prompted by his observation of the Respondent's trucks in other areas of Philadelphia. Browne had heard that the Respondent was using a non-union agency to obtain employee referrals. The Respondent responded to the request by sending data pertaining only to the airport jobsite.

My colleagues conclude that the Commercial Agreement and the Letters of Assent refer unambiguously to any and all work performed by Respondent within IBEW's jurisdiction. Thus, according to the majority, it is clear that the agreements were not confined to the airport project, and parol evidence to the contrary should not be considered.

¹ On this date of the signing of the IBEW Letter of Assent, the airport project was about 2-½ months underway.

⁹ 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."

I disagree. In reaching their conclusion, my colleagues drew a distinction between the definition of IBEW work and the geographic scope of the agreement. They conclude that there may be some ambiguity on the former point, but they contend that there is no ambiguity on the latter point, i.e., that the agreement clearly covers all of Respondent's sites, present and prospective.

I disagree. The Commercial Agreement refers to recognition at "all present and future job sites," *if and when a majority of the Employer's employees authorized the Union to represent them in collective bargaining* (emphasis supplied). The phrase "all present and future job sites" is repeated in the Letters of Assent, but that language is again conditioned upon the "majority" requirement. Thus, a reasonable reading of the agreement is that the contract applies to the Airport Job *under Section 8(f)*, but that application to other sites would depend on majority status. There is no claim that the Union had majority status at these other sites.²

My colleagues interpret the contract as covering multiple sites, with the proviso that some sites would remain under *Section 8(f)* and others (where majority is shown) would be under Section 9. I shall assume arguendo that this is a reasonable reading of the contract. However, another reasonable reading of the contract is that the Respondent recognized the Union as the 8(f) representative for the airport project, but it was unwilling to recognize the Union at all for other sites unless majority status was shown. That status has not been shown.

Based on the above, I concluded that the documents are not clear and unambiguous. Accordingly, I would consider, as did the judge, the parol evidence. That evidence clarifies the ambiguity. It is abundantly clear, as it was to the judge, that the parties' agreement was limited to the airport project.

Since the parol evidence makes it clear that the parties intended to restrict the contract to the airport site, the real issue in this case is whether the Board will ignore that relevant evidence. In my view, the contract is sufficiently ambiguous as to warrant consideration of that evidence.

Since the contract was limited to the airport project, the Union had no basis for requesting that the Respondent furnish information concerning work on projects other than the airport project, and the Respondent was justified in not furnishing such information. Accordingly, I find that the Respondent has not violated Section 8(a)(5), and I would dismiss the complaint.

² The other phrases in the documents ("any" and "all" work) at least arguably refer to the type of work performed, rather than to the location of the work.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

Section 8(a)(5) of the Act requires an employer to bargain in good faith with the collective-bargaining representative of its employees, and to provide relevant information requested by the collective-bargaining representative for the purpose of carrying out its representational duties.

WE WILL NOT refuse or fail to provide relevant information requested by the International Brotherhood of Electrical Workers Local 98 for the purpose of carrying out its representational duties.

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

WE WILL immediately comply with the request for information from the International Brotherhood of Electrical Workers, Local 98 dated January 20, 1997.

COMMONWEALTH COMMUNICATIONS,
INC.

Peter C. Verrochi, Esq., for the General Counsel.
Jerome A. Hoffman, Esq. and *Matthew Lee Weiner, Esq.*, for the Respondent.
Stephen J. Holroyd, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARGARET M. KERN, Administrative Law Judge. This case was tried before me on December 8, 1998, in Philadelphia, Pennsylvania.¹ The complaint, which issued on May 29, 1998, was based upon an unfair labor practice charge and an amended charge filed on February 27 and March 6, 1997, by the International Brotherhood of Electrical Workers, Local 98, AFL-CIO-CLC (Local 98 or the Union) against Commonwealth Commu-

¹ The General Counsel's unopposed motion to correct the transcript is hereby granted.

nications, Inc. (Respondent). It is alleged that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with requested information. For the reasons set forth herein, I recommend dismissal of the complaint.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

A. Background

Respondent is engaged in the business of providing local telephone and telecommunications services and installing telephone communications equipment at locations in Pennsylvania and New Jersey. Since 1981, the Communications Workers of America (CWA) has been the collective-bargaining representative of Respondent's installation, maintenance, and service employees. Respondent and the CWA have been party to a series of collective-bargaining agreements, including agreements effective 1993–1996 and 1996–1999. Prior to the events herein, the CWA agreement covered all of Respondent's employees and Respondent did not regularly employ electricians.

Respondent maintains that the CWA is the 9(a) representative of its employees. The recognition clause contained in each negotiated collective-bargaining agreement reads as follows:

The company hereby recognizes the officers and agents of the [CWA] as the exclusive collective bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, for its Installation, Maintenance and Service employees, but specifically excluding clerical employees; also confidential, professional and supervisory employees as defined in the Labor-Management Relations Act of 1947, as amended.

Neither the General Counsel nor the Charging Party challenged Respondent's assertion of the CWA's 9(a) status at the hearing or in their briefs. I therefore find, based upon the evidence, that the CWA has been, at all times relevant herein, the 9(a) representative of Respondent's employees in the described unit.

B. Local 98's Collective-Bargaining Agreements

Local 98 is party to a Commercial Agreement with the Philadelphia Division of the Penn-Del-Jersey Chapter of the National Electrical Contractors' Association. The relevant Commercial Agreements in this case were effective from May 1, 1994, to April 20, 1997, and from May 1, 1997, to April 20, 2000. The agreements provide that they continue in effect from

year to year unless changed or terminated upon written notice at least 90 days prior to the expiration of the agreements.²

The 1994–1997 Commercial Agreement contained the following language at section 2.09:

The Employer agrees that, if it has not previously done so, it will recognize the Union as the exclusive collective bargaining agent for all employees performing electrical work within the jurisdiction of the Union on all present and future job sites, if and when a majority of the Employer's employees authorized [sic] the Union to represent them in collective bargaining.

At page 18 of the same agreement is an "Individual Letter of Assent-A" in which the following language appears:

In signing this letter of assent, the undersigned firm does hereby authorize [the association] as its collective bargaining representative for all matters contained in or pertaining to the current and any subsequent approved Inside Commercial labor agreement between [the association] and Local Union 98, IBEW.

The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the NLRA Section 9(a) collective bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future job sites.

The terms "electrical work" and "electrical construction work" are not defined either in the Commercial Agreement or in the Letter of Assent. Nor is there any other definition of the work covered by the Commercial Agreement as testified to by John Dougherty, business manager for Local 98:

Q: And is that your understanding of what is covered by this agreement . . . it covers more than electricity—electrical work?

A: It covers exactly what I told you it covered.

Q: Which includes more than electricity?

A: Yes.

Q: Now can you tell me where in General Counsel Exhibit 2 there is a definition of electrical work?

A: No. There's nothing in here that explicifies [sic] a definition.

Q: Is there a definition of the work that is covered?

A: I think I already answered that no.

Q: The answer is no?

A: I already answered that no.

Section 2.03(c) requires an employer to notify Local 98 of all contracts secured within its jurisdiction. Section 2.03 (g) prohibits the subcontracting of "any work in connection with electrical work" to any non-IBEW signatory employer "in the jurisdiction of this or any other local union."

As to the types of employees covered by the Commercial Agreement, there is no recognitional clause per se and no

² By letter dated May 2, 1997, Respondent attempted to terminate its contractual relationship with Local 98. It is not in dispute that this attempt was untimely.

clearly defined bargaining unit. Reference is made in sections 2.01(b) and 5.02 to journeyman electricians and apprentices, and Appendix A sets forth wage rates for journeymen and apprentices. Section 5.09 refers to "electrical workers." Article VI refers to journeymen, journeymen/wiremen, and apprentices. Section 2.03(a) is a 30-day union-security clause which applies to "all employees." Section 3.07 provides for an employer to withhold working dues from IBEW members, not all employees. Section 2.03(d) requires the employer to furnish to the Union on a monthly basis the names of union members employed, not the names of all employees. Section 3.04 requires the employer to make pension and benefit contributions for "all employees covered under the terms of this Agreement" calculated as a percentage of the gross labor payroll paid to "employees in the bargaining unit represented by the Union under this Agreement." Section 3.09 authorizes a work stoppage by "electricians" should an employer fail to pay the wages and benefits provided for in the Commercial Agreement. Section 4.10 sets forth the obligations of an employer to pay travel and living expenses and to make fringe benefit contributions when an employee is required to travel from one job to another both within the jurisdiction of Local 98 and outside the jurisdiction of Local 98. The geographic jurisdiction of Local 98 is set forth in detail on the last page of the Commercial Agreement. There is no hiring hall provision.

In addition to the Letter of Assent-A contained in the Commercial Agreement, there is a second version of the Letter of Assent-A used by Local 98 which is a preprinted form. The second version contains most of the same language as is contained on page 18 of the Commercial Agreement. In the preprinted form, however, there is a series of blank spaces for insertion of information and accompanying explanatory footnotes. In the blank space which calls for a description of the type of work covered by the Letter of Assent, there is a footnote instruction which reads as follows:

TYPE OF AGREEMENT. Insert type of agreement.
Example: Inside, Outside Utility, Outside Commercial, Outside Telephone, Residential, Motor Shop, Tree Trimming etc. The Local Union must obtain a separate assent to each agreement the employer is assenting to.

C. Dougherty's Testimony re: Local 98's Jurisdiction

Dougherty was questioned about the type of "electrical work" his members perform, and he testified that the work includes heating, ventilation, air conditioning (HVAC), fire alarm, all types of security, all types of telecommunications, phone, fiber, copper, land, power distribution, transformer, all types of new construction, major renovation, moves, adds and changes, satellite, CATV, fiber, high voltage installation, high voltage maintenance, high voltage testing, power distribution, power analysis, lighting, all types of AC and DC installations, remote control, wireless systems, and nurse's call.

D. The Philadelphia Airport Job

The genesis of the dispute in this case surrounds the subcontracting of work to Respondent by Lombardo and Lipe, the primary electrical contractor on a large-scale construction project at the Philadelphia Airport. Lombardo and Lipe's employ-

ees are represented by Local 98. On May 1, 1995, Respondent was awarded a subcontract to perform telephone cabling work for Terminals B and C. Respondent was an approved certified vendor for the AT&T Systemax system used at the airport, and Respondent's CWA-represented employees had been trained and certified by AT&T to perform the work specified in the subcontracting agreement.

Stuart Kirkwood, vice president of operations, testified that at the pre-bidder's conference, Respondent was "strongly encouraged to work with Local 98 because they had a presence at the airport." Respondent consulted with the CWA and obtained the CWA's consent to use Local 98 members on the job. According to Kirkwood, without the CWA's consent, Respondent would not have bid on the job. It was resolved that the CWA members would perform the skilled work and the Local 98 members would perform the less skilled, laborer-type work such as pulling cables.

On July 12, someone in Respondent's sales office in Philadelphia faxed Kirkwood a copy of the preprinted Letter of Assent-A form. In the blank which called for a specification of the type of work covered by the agreement, Kirkwood typed "Inside Telephone Cable Work at Philadelphia Airport." Kirkwood also typed in the name of Local 98, Respondent's name and address, and he signed the document. Kirkwood was uncertain at the time of his testimony if he mailed the completed form back to Respondent's sales office or to Local 98. He did recall that a meeting was scheduled with Dougherty for the following week.

E. The Signing of the Letter of Assent

Kirkwood testified that he met with Dougherty at the Union's office on July 20, 1995, for 3 hours. He was certain of the date and time because the appointment had been entered into his daily calendar which was introduced into evidence. Also present at the meeting were Ed Kovatch, then Respondent's director of employee relations, James Farrow, business agent for the Union, and another individual from Local 98 whose name Kirkwood could not recall. Kirkwood gave Dougherty a copy of the Letter of Assent he had filled out the week before and said: "This is what we're here to discuss, the Philadelphia Airport job, and this is the Letter of Assent that we were led to believe we have to sign." According to Kirkwood, they "discussed just . . . initially, just that job." The Commercial Agreement was reviewed page by page with Kovatch, after which Kirkwood and Kovatch were taken on a tour of the Union's facility. When they returned from the tour, Kirkwood was presented with a Letter of Assent with multiple carbon copies attached. In the blank space where Kirkwood had previously typed "Inside Telephone Cable Work at Philadelphia Airport" the words "Inside Commercial" appeared instead. Kirkwood remarked about the change in language and Dougherty assured Kirkwood that the Union knew which work the assent agreement referred to, but that the reference to "Inside Commercial" coincided more with the types of work specified in the footnote at the bottom of the Letter of Assent.

Kirkwood testified that the reason Kovatch attended the meeting was because Kovatch negotiated all of Respondent's labor contracts. Kirkwood and Kovatch made it clear to

Dougherty and Farrow that the CWA represented Respondent's employees and that any agreement "was just for the airport project, and that we were covered by a union contract." Kirkwood told Dougherty that Respondent's CWA employees were trained and certified by AT&T to work on the Systemax system and that he could not give this work to Dougherty's men. He did assure Dougherty that he would give other work to the Local 98 members on the job. Dougherty stated that Local 98 wanted to get more involved in telecommunications work, but voiced no objection to Kirkwood's assignment of the work. He did say that he hoped that the relationship between Respondent and Local 98 could go further and that they could work together on other projects. Kirkwood told Dougherty that the Respondent could not fulfill a number of the terms contained in the Commercial Agreement and Dougherty responded that it was a "standard document, and that's how it was." Kirkwood again received "verbal assurances from . . . Dougherty that he knew what we were doing. He would help us try to accomplish what we [had] to at the airport." Kirkwood and Dougherty both signed the two Letters of Assent-A (the one at p.18 and the preprinted form) and the Commercial Agreement.

Dougherty was called as a witness for the General Counsel on his case in chief and again on his rebuttal case. On his first trip to the witness stand, Dougherty testified that he met with Kirkwood a single time in May 1995 in Local 98's boardroom. Farrow was present at this meeting and a fourth person whose identity Dougherty could not recall. Dougherty was clear in his recollection that no Letter of Assent was signed by Kirkwood during this meeting. When he was shown the Letter of Assent on which Kirkwood had typed "Inside Telephone Cable Work at Philadelphia Airport," Dougherty testified that he had never seen the document before. Dougherty acknowledged that during the course of this meeting in May, Kirkwood mentioned the fact that Respondent had a collective-bargaining agreement with the CWA. According to Dougherty, it was not until 2 months after his face-to-face meeting with Kirkwood that Dougherty executed the Letter of Assent-A which contained the words "Inside Commercial." He could not recall how he came into possession of that document, but he was certain that he signed it in his office, alone, on July 20 and that Kirkwood's signature, also dated July 20, was already on the document. He was unable to adequately explain how Kirkwood's signature was dated July 20 since Kirkwood was not in Local 98's offices that day.

Dougherty was present in the hearing room during Kirkwood's testimony. When he was recalled to the stand as a rebuttal witness, he was asked again about the date of his meeting with Kirkwood. Dougherty testified, "I recall meeting with him, and I said it was around the time that I previously stated . . . in that vicinity, April, May, June, July, somewhere . . . prior to that job in '95." Counsel for the General Counsel then asked Dougherty if the Letter of Assent and the Commercial Agreement were signed at that meeting, and if Kirkwood's testimony had refreshed his recollection. Dougherty engaged in a discourse for four transcript pages:

I know I signed that document on the 20th because that's the date that was on it, and I would have signed it. No, I did not

sign in front of Mr. Kirkwood . . . And, yes, I did take them on a tour . . . And, no, we weren't trying to get into the communication field, much like we weren't trying to get into the electric field . . . And yes, in the conversation, we had some discussion about the lack of people . . . the educated people in the field in general and how we talked about not only the CWA being a farce, but the IBEW 1448 . . . There was no reason for me, in this conversation, to break any rules because, to get to your point, why would I sign a one job agreement? There was no reason. I controlled the job. My contractor had . . . three other bids. There was four people looking at this job . . . I left the room . . . and said, here's my deal, I don't need you, either you take it or leave it. When I get back, if your signature is on it, I'll sign it and process it. Now, that's probably the way the thing developed . . . I take it from A to Z and tell you what our work is. I explained to Mr. Kirkwood, emphatically, that there was no need for him to do something that he was uncomfortable with because I controlled this job . . . So, from John Dougherty's standpoint, there was no need to have CCI sign an agreement with me.

Dougherty was asked if, during this meeting, there was any discussion about the agreement being limited to the airport job. Dougherty responded, "There might have been . . . from the CCI side of the table . . . could they just, probably, do an agreement, you know, and walk away from it, and I told them I never do them agreements." Dougherty further testified that he was unaware that Respondent had CWA-represented employees at the airport, and that it was his understanding that other than Local 98 members, the only employees Respondent employed at the airport were two or three members of IBEW Local 1448 for a couple of days. Dougherty testified that there was a Local 98 shop steward on the job, but that the steward never reported the presence of CWA employees to him.

Respondent's records establish that from July 1995 through March 1996, 20 CWA-represented employees worked 2693.25 hours or 46 percent of the total hours worked, and 18 Local 98-represented employees worked 3209 hours or 54 percent of the total hours worked on the airport job.

Farrow also testified as a rebuttal witness for the General Counsel. He recalled attending a meeting in 1995 at which Dougherty and Kirkwood were present. Farrow testified that Kirkwood was given an agreement to sign, but when asked whether the agreement was signed during the meeting, he testified, "not to my knowledge." When asked whether there was a discussion about limiting the assent agreement to the Philadelphia Airport job, he again testified, "not to my knowledge." Farrow corroborated Dougherty's testimony that Local 98 has never entered into a single site contract.

F. The Information Request

By letter dated January 20, 1997, Timothy Browne, a Local 98 business representative, made the following request of the Respondent:

Please send me copies of the following in accordance with our agreement:

1. Copies of quarterly reports to PA Dept. of Revenue showing wages since 7/20/95.

2. Copies of WC2³ reports filed since 7/20/95.
3. Copies of quarterly reports to the Philadelphia Dept. of Revenue showing wages paid since 7/20/95.
4. Copies of commercial association agreements and subassociation agreements for inside commercial work performed since 7/20/95.
5. List of all employees, and the hourly rate paid to each person on each job employed on all inside Commercial job sites since 7/20/95.
6. Copies of all weekly time and payroll records for all employees since 7/20/95 showing hours worked and hourly rates paid on each job site.
7. Copies of quarterly reports to the IRS since 7/20/95.

Browne explained that he had seen Respondent's trucks in the area and that the purpose of the request was to find out what jobs Respondent had within Local 98's jurisdiction. He testified that when he prepared the information request, he was of the understanding that the agreement between Respondent and Local 98 covered all of Respondent's employees employed within Local 98's jurisdiction, not just electricians, and further, that he was unaware of the collective-bargaining relationship between Respondent and the CWA.

By letter dated February 5, 1997, Respondent responded to the information request by sending certified payrolls from the airport job reflecting hours worked and rates of pay. Respondent did not provide any information for any other jobsite. Browne testified that he looked at the payrolls and determined that the information related only to the airport job. Since the information he was requesting was for other jobs Respondent may have had within Local 98's jurisdiction, Browne did not communicate further with Respondent and filed the instant unfair labor practice charge.

IV. ANALYSIS

A. *Applicability of the Parol Evidence Rule*

It is alleged in the complaint that Local 98 is the limited exclusive collective-bargaining representative in the following unit: "journeymen electricians or apprentices performing 'inside commercial' work for Respondent within the Union's 'Geographical Jurisdictional Lines' as set forth in the [Commercial] Agreement, including Article II thereof." It is the General Counsel's position that the 1994-1997 and 1997-2000 Commercial Agreements extend to all projects of Respondent within the geographic jurisdiction of Local 98. Respondent maintains that the agreement it signed on July 20, 1995, was project specific applying only to the Philadelphia Airport.

It is not in dispute that the recognition extended to Local 98 was as an 8(f) representative and there has never been a demand by Local 98 for recognition as the 9(a) representative of any of Respondent's employees. Thus, there is no presumption regarding the scope of the unit. In the construction industry, a single employer unit will normally be deemed appropriate for the purposes of conducting an election. *John Deklewa & Sons*, 282 NLRB 1375 (1987). Where as here there is no claim of

majority status and no petition filed, the determination of the scope of the unit must be based upon a review of the contractual agreements and, if appropriate, parol evidence.

In the Commercial Agreement there is conditional language that if and when a majority of employees authorizes the Union to represent them, the employer will recognize the Union as the exclusive bargaining representative of "all employees performing electrical work". In the Letters of Assent, the same language appears except that the recognition will be extended to "all employees performing electrical construction work." The Board has previously determined that this language constitutes a continuing request by a union for 9(a) recognition and a continuing, enforceable promise by an employer to grant voluntary recognition on that basis if and when the Union demonstrates majority support. *Goodless Electric Co.*, 321 NLRB 64, 66 (1996). In this case, therefore, there is a continuing demand by Local 98 to represent those of Respondent's employees who perform either electrical work or electrical construction work. There is no evidence, however, that there has been a showing of majority support for Local 98 by any grouping of employees. Cf. *Oklahoma Installation Co.*, 325 NLRB 741 (1998). Thus, the units described in the Commercial Agreement and in the Letters of Assent, couched only in terms of when there is a showing of majority status, are of no assistance in determining the scope of the unit agreed to by the parties on July 20, 1995, when the 8(f) relationship was established.

The critical flaw in the Commercial Agreement is the absence of a definition of the work covered. In his brief, the General Counsel relies on the extrinsic testimony of Dougherty to describe the myriad types of work which Dougherty deems to be "electrical work." There is nothing in the four corners of the Commercial Agreement or the Letters of Assent, however, that sets forth the types of work testified to by Dougherty. The General Counsel strenuously argues against consideration of extrinsic evidence to resolve the issue of whether these agreements were project specific, but relies on extrinsic evidence, specifically Dougherty's testimony, to define the scope of the work. It cannot reasonably be argued that extrinsic evidence should be considered for the purpose of defining the scope of the work covered by the Commercial Agreement, but should not be considered in determining whether the agreements were project specific. Indeed, the two issues go hand in hand. Resolution of the issue of the scope of the work in this case necessarily resolves the issue of whether the agreement was project specific.

In addition to the absence of any definition of work covered by the Commercial Agreement, there is no recognition clause defining the specific job classifications covered by the agreement. Most of the provisions of the Commercial Agreement refer to journeymen and apprentice electricians. However, the 30-union security clause applies to "all employees" of Respondent. In the absence of an exclusive hiring hall provision, the union security clause presumably extends to all employees of Respondent, including those represented by the CWA. This is inconsistent with the balance of the agreement which appears to apply only to members of Local 98.⁴

³ This was a typographical error and should have read "UC-2 reports" which are reports filed by employers in the State of Pennsylvania for unemployment claims.

⁴ The testimony of the General Counsel's witnesses on this point is equally ambiguous. The appropriate unit alleged in the complaint is

This case is distinguishable from the Board's recent decision in *Sommerville Construction Co.*, 327 NLRB 514 (1999). In *Sommerville*, a nonunion contractor signed an agreement with the Bricklayers recognizing the union "as the sole and exclusive collective-bargaining representative for and on behalf of the employees of the employer now or hereinafter employed within the territorial or occupational jurisdictions of the union." The Board affirmed Judge Gross' view that this clear recognitional language belied any suggestion that the parties intended only a single-project agreement. In *Cowboy Scaffolding, Inc.*, 326 NLRB 1050 (1998), relied on by the General Counsel in this case, the bargaining unit was defined by specific types of employees performing work within a defined geographic area. In rejecting the employer's argument that the agreement was project specific, the Board concluded that the language of the collective bargaining was plain and unambiguous and extended to all projects of the employer for the life of the agreement. Significantly, the Board considered the conduct of the parties at and after the signing of the agreement to conclude that nothing therein cast doubt as to the intentions of the parties as embodied in the collective-bargaining agreement.

I further reject as unsupported the General Counsel's suggestion that the Board has previously determined that Letters of Assent used by IBEW locals bind each and every signatory employer to a term agreement rather than a project specific agreement. There is no question that Letters of Assent used by the IBEW have been determined to be effective in binding signatory employers to applicable association collective-bargaining agreements. *Reliable Electric Co.*, 286 NLRB 834 fn. 5 (1987). Respondent concedes that it is bound to the Commercial Agreement by virtue of executing the Letters of Assent. Respondent's challenge is not to the enforceability of the Letters of Assent but to the ambiguity in the terms of the Commercial Agreement itself. None of the cases cited by the General Counsel and the Union discuss agreements negotiated between Local 98 and the Penn-Del-Jersey chapter of NECA. Each cited case involved different IBEW locals and different chapters of NECA. *Kirkpatrick Electric Co.*, 314 NLRB 1047 (1994) (IBEW Local 136 and Birmingham Division, Central Mississippi Chapter); *Bufco Corp.*, 291 NLRB 1015 (1988) (IBEW Local 16 and Evansville Division, Southern Indiana Chapter); *Electrical Workers IBEW Local 532 (Brink Construction)*, 291 NLRB 437 (1988) (IBEW Local 532 and NECA-Western); *Stack Electric*, 290 NLRB 575 (1988) (IBEW Locals 110 and 292 and the Minneapolis and St. Paul Chapters); *City Electric*, 288 NLRB 443 (1988) (Local 1317 and Laurel Division, Central Mississippi Chapter); *Reliable Electric Co.*, 286 NLRB 834 (1987) (IBEW Local 68 and the Rocky Mountain Chapter); *Leapley Co.*, 278 NLRB 981 (1986) (IBEW Local 26 and Washington D.C. Chapter); *Watt Electric Co.*, 273 NLRB 655 (1984) (IBEW Local 584 and Eastern Oklahoma Chapter); *Hayden Electric, Inc.*, 256 NLRB 601 (1981) (IBEW Local 728 and Florida East Coast Chapter); and *Nelson Electric*, 241

limited to journeymen and apprentice electricians. Browne testified that he believed the unit consisted of all of Respondent's employees. Dougherty similarly testified that he believed Local 98 represented all of Respondent's employees on the jobsite.

NLRB 545 (1979) (IBEW Local 669 and Western Ohio Chapter). Thus, the General Counsel and Charging Party's prediction that a successful challenge by the Respondent to the validity of the Commercial Agreement in this case would have nationwide implications and would serve to undermine the entire construction industry is just so much saber rattling.

The parol evidence rule is a rule of substantive law which requires that when parties have made a contract and have expressed it in a writing to which they have all assented as the complete and accurate integration of that contract, evidence of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing. Although evidence outside the agreement may not be introduced to vary its terms, evidence may be introduced for the purpose of ascertaining the correct interpretation of the agreement. *Southern California Edison Co.*, 295 NLRB 203, 218 (1989), petition for review denied 927 F.2d 635 (D.C. Cir. 1991); and *Inter-Lakes Engineering Co.*, 217 NLRB 148 (1975). Where sufficient ambiguity exists in the language of the document itself, extrinsic evidence is properly resorted to determine the agreement's meaning. *Sansla, Inc.*, 323 NLRB 107 (1997); and *Operating Engineers Local 3 (Joy Engineering)*, 313 NLRB 25 fn. 2 (1993). I find that such ambiguity exists in this case because of the lack of any definition of the work covered by the agreement and because of the conflicting references as to whether the agreement covers all employees or just members of Local 98. It is therefore appropriate to consider extrinsic evidence to resolve the issue of whether this Commercial Agreement was a term agreement or project specific.

B. The Extrinsic Evidence

Dougherty testified with certainty on direct examination that the only meeting he ever had with Kirkwood was in May 1995 and that the Letter of Assent was not signed during the course of that meeting. Dougherty insisted that he signed the Letter of Assent when he was alone in his office on July 20. After Kirkwood credibly testified that his 3-hour meeting with Dougherty took place on July 20, and after he produced his written diary corroborating that fact, Dougherty testified with equal certainty on rebuttal that he signed the agreement on July 20 during the course of his meeting with Kirkwood. In an effort to rehabilitate his witness, the General Counsel asked Dougherty a simple question, that is, if Kirkwood's testimony had refreshed Dougherty's recollection about the meeting. His answer was anything but simple, but nonetheless revealing. In a rambling discourse, Dougherty boasted that there was no reason for him to sign a single project agreement because he "controlled the job" and that he told Kirkwood on July 20 "here's my deal. I don't need you, either you take it or leave it." He explained "from John Dougherty's standpoint, there was no need to have CCI sign an agreement. . . ." Of course, that was not the case, as an examination of the chronology of events demonstrates.

Respondent had been awarded the subcontract from Lombardo & Lipe on May 1, at a time when Respondent had no relationship with Local 98. On July 20, Respondent had an executed subcontracting agreement in hand and a unionized workforce certified to perform the work involved. Moreover, Kirkwood had the consent of the CWA to share the airport

work with Local 98. The consent was limited to the airport job and I credit Kirkwood's testimony that absent that consent, he would not have entered into the subcontract with Lombardo & Lipe. The sum of this evidence shows that it was Respondent, not Local 98, who was in control and that the only reason Respondent agreed to sign any agreement with Local 98 was at the request of Lombardo & Lipe to ensure labor peace. Confronted with these realities, it was in Dougherty's interest to sign an agreement, even one limited to a specific project, so as to be able to demonstrate to Respondent that his members were as qualified as CWA members to perform telecommunications work. The longstanding efforts of Local 98 to have its members perform telecommunications work is well documented, *Electrical Workers IBEW Local 98 (Telephone Man)*, 327 NLRB 593 (1999); *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 226 (1997); and *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997), and this was the setting in which the July 20 meeting took place.

Kirkwood's recitation of the events of July 20 was credible, plausible, and consistent with the other evidence in the case. I credit Kirkwood's testimony that he made clear to Dougherty and Farrow that the CWA represented Respondent's employees and that any agreement would have to be limited to the airport job. Dougherty admitted in his rebuttal testimony that there "might have been" a discussion about limiting the agreement to just the airport job, although he claimed to have rejected the idea. I further credit Kirkwood's testimony that he told Dougherty that he would divide the work between the CWA employees who were certified on the Systemax system and the Local 98 employees who were not. Dougherty voiced no objection and told Kirkwood that Local 98 wanted to get more involved in telecommunications work and that he hoped they could work together on future projects. Thus it is clear that Dougherty was willing to have a limited presence with Respondent at the airport job in order to achieve his long term goal of having his members perform telecommunications work in the Philadelphia area.

I discredit Farrow's testimony which was not only contradictory of Kirkwood's credible testimony, but contradictory of Dougherty's testimony as well. On rebuttal, Dougherty admit-

ted that the Letters of Assent and the Commercial Agreement were signed during the course of the July 20 meeting. Farrow testified that to his knowledge they were not signed during the meeting. Dougherty admitted that there was discussion about a project specific agreement and Farrow testified that there was no such discussion. The inconsistencies between the General Counsel's witnesses further lead me to conclude that they are not credible in their recollection of the events of July 20, 1995.

The events following the July 20 meeting further corroborate Kirkwood's testimony. When work commenced at the airport, Respondent's workforce was divided roughly in half between members of the CWA and members of Local 98. I reject as a complete fabrication Dougherty's testimony that he was unaware of the presence of CWA employees at the site. Local 98 had a steward at the job and obviously observed the 20 CWA members working side-by-side with the 18 Local 98 members. At no time did Local 98 object to the CWA's presence, file a grievance, or take any other adverse action.

For all of these reasons, I conclude the agreement entered into by the Respondent and Local 98 on July 20, 1995, was a single project agreement limited to the Philadelphia Airport.

C. *The Request for Information*

Since the agreement between Respondent and Local 98 was limited to the airport job, Respondent's obligation to provide relevant information to the Union was similarly limited. The purpose of the Union's information request was to ascertain Respondent's presence at other jobsites. As such the request sought irrelevant information and the Respondent's failure to provide the information did not violate the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not violated the Act as alleged in the complaint.

[Recommended Order omitted from publication.]