Disneyland Park and Disney's California Adventure, Divisions of Walt Disney World Co. *and* International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL–CIO. Case 21–CA–35222

September 13, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On May 15, 2003, Administrative Law Judge Lana H. Parke issued the attached decision. The Respondent filed exceptions and a supporting brief and a reply brief. The General Counsel filed exceptions and a supporting brief and an answering brief.

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

The issue before the National Labor Relations Board is whether Disneyland Park,[1] violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with requested information. Having considered the decision and record in light of the exceptions and briefs, we adopt, for the reasons given by the judge, her dismissal of the allegation that the Respondent unlawfully refused to permit the Union to view subcontracts and files relating to the bidding and performance of the subcontracts. We reverse the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union with the dates of each subcontract, nature of the work, the dates upon which the work was performed, and the name of the subcontractors performing unit work. Accordingly, we dismiss the complaint in its entirety.

Background

The Respondent is engaged in the business of operating a retail hotel and two entertainment facilities: Disneyland Park and Disney's California Adventure. The Respondent and Union have been parties to successive collective-bargaining agreements covering job classifications involving primarily facility maintenance, repair, and rehabilitation. The latest collective-bargaining agreement initially concerned only Disneyland Park and was effective from March 1, 1998 to February 28, 2003. In 2000, as part of a deal to include the newly created theme park, Disney's California Adventure, the parties extended the existing collective-bargaining agreement to February 28, 2005. Section 23 of the contract, applicable only to Disneyland Park, provides, in pertinent part, that:

> During the terms of the Agreement, the Employer agrees that it will not subcontract work for the purpose of evading its obligations under this Agreement. However, it is understood that the Employer shall have the right to subcontract . . . , where the subcontracting of work will not result in the termination or layoff, or the failure to recall from layoff, any permanent employee qualified and classified to do the work.

In a February 11, 2001 letter, the Union's attorney, David Rosenfeld, requested, in pertinent part, that the Respondent provide the Union with information concerning the Respondent's subcontracts that were arguably within the Union's jurisdiction. In requesting the information Rosenfeld wrote that "The Union has observed that there have been a number of subcontracts within Disneyland for work covered by the agreement within Local 433's jurisdiction. The Union is concerned that such subcontracting may not comply with the terms of the agreement."

In a March 11, 2001 letter, Jennifer Larson, Respondent's labor/cast relations manager, answered that "Section 23 of the Collective Bargaining Agreement specifically allows for subcontracting of any work . . . when it will not result in the termination or layoff, or failure to recall from layoff, any permanent employee qualified and classified to do the work. [I]n light of the explicit language of the contract, [the information request is] apparently unnecessary . . . We would be happy to give your request further consideration if you could explain with some level of detail the relevance of this request . . . ."

On March 22, 2001, Rosenfeld responded by stating that the Union believed there had been an increase in subcontracts.

On April 3, 2001, Larson responded, stating that there had been no layoffs of Local 433 employees, and thus the Respondent did not believe that a contractual issue existed at that time. Larson offered to further consider the request if the Union would explain the relevance of the information to its role as the employees' collective-bargaining representative.

On April 9, 2001, Rosenfeld replied: "At least one iron worker has retired and has not been replaced. Additionally, no new steward has been hired at the new theme park. It is plain that Disneyland is reducing its work force and subcontracting additional work. It is for these reasons the information is requested."[2]

[1] As discussed herein, although the complaint lists as Respondents both Disneyland Park and Disney's California Adventure, two divisions of Walt Disney World Co., the contract provision at issue in conjunction with the alleged violation applies only to Disneyland Park.

[2] As noted above, this case concerns only Disneyland Park and sec. 23 of the collective-bargaining agreement. Thus, the Respondent's failure to hire a union steward for Disney's California Adventure is not relevant.

On May 10, 2001, Larson informed the Union: "you have failed to provide any reason which would lead to a viable claim under our Collective Bargaining Agreement. The Company has the explicit right to determine the number of employees and how they are utilized to run the business." Larson informed Rosenfeld that the Respondent did not believe it was obligated to furnish the requested information.

On June 17, 2001, Rosenfeld responded: "Your letter takes the position Disney will not provide any of the subcontracts. I want to make it plain we seek only subcontracts that involve work arguably or possibly performed by Iron Workers."

The Judge's Decision

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with a list of all subcontractors performing work within the Union's jurisdiction from January 1, 1999 to present, the date of each subcontract, the nature of the work, the name of the subcontractors, and the dates the work was performed. The judge deemed this information relevant to the Union's efforts in determining whether evidence exists of an attempt by the Respondent to evade its contract obligations through the erosion of unit work.

However, the judge found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to allow the Union to review the subcontracts or any files Respondent maintains regarding the bidding and performance of the contracts. The judge found that this information did not appear to be of probable or potential relevance to the question of whether the Respondent was evading its bargaining obligation, and that neither the Union's counsel nor the General Counsel explained how obtaining such information would assist the Union in determining whether the Respondent violated the agreement. The judge found that the Union's generalized, conclusory explanations of how the information would assist the Union in evaluating whether the Respondent violated the Act did not trigger an obligation on the Respondent's part to provide the information.

The Respondent's Exceptions

The Respondent contends that the judge erred in finding that it violated Section 8(a)(5) and (1) by refusing to furnish the Union with a list of all subcontractors performing work within the Union's jurisdiction from January 1, 1999 to present, the date of each subcontract, the nature of the work, the name of the subcontractors, and the dates the work was performed. The Respondent argues that the information requested by the Union is irrelevant under the terms of the collective-bargaining agreement, because the Respondent had the unfettered right to subcontract so long as the subcontracting did not result in the layoff or failure to recall from layoff a bargaining unit member. The Respondent noted that no member of the bargaining unit was laid off or denied recall. Further, the Respondent asserts that it cannot be found to have evaded the agreement because the agreement does not contain any provision requiring the Respondent to maintain its work force at a particular level, require them to refrain from reducing the work force, or otherwise protect the work force from reduction.

The Charging Party's Exceptions

The Charging Party argues the judge erred in finding that the Respondent did not violate Section 8(a)(5) and (1) by failing to provide information concerning the bidding process to the Union. The Charging Party contends that the judge cannot reasonably find, on one hand, that information relating to subcontracting is relevant, but on the other hand, find that information relating to the bidding process and performance of the contracts is irrelevant. The Charging Party further asserts that information relating to the bidding and performance of the contract is relevant because it could help the Union convince the Respondent to limit or reduce subcontracting. Thus, the Respondent was obligated to provide the information.

Applicable Law

An employer has the statutory obligation to provide, on request, relevant information that the union needs for the proper performance of its duties as collective-bargaining representative. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967)*; Detroit Edison Co. v. NLRB,* 440 U.S. 301 (1979). This includes the decision to file or process grievances. *Beth Abraham Health Services,* 332 NLRB 1234 (2000). Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and the Respondent must provide the information. However, where the information requested by the union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate the relevance. *Richmond Health Care,* 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc.,* 318 NLRB 318 (1995), enfd. 108 F. 3d 1182 (9th Cir. 1997); *Pfizer, Inc.,* 268 NLRB 916 (1984), enfd. 736 F.2d 887 (7th Cir. 1985).[3] A union has satisfied its bur-

[3] Our dissenting colleague takes issue with our reliance on *Richmond Health Care* supra, and *Associated Ready Mixed Concrete, Inc.,* supra, noting that those cases, unlike the instant case, were summary judgment cases involving newly certified unions. However, we cited those cases solely for the principle, which our dissenting colleague recognizes as

den when it demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant. *Knappton Maritime Corp.,* 292 NLRB 236, 238–239 (1988).[4]

Information about subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, is not presumptively relevant. Therefore, a union seeking such information must demonstrate its relevance. *Richmond Health Care*, 332 NLRB 1304, 1305 fn. 1 (2000).

The Board uses a broad, discovery-type standard in determining the relevance of requested information. Potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. Id. To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information,[5] or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances. See *Allison Co.,* 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc.,* 241 NLRB 1016, 1018–1019 (1979), enfd. in relevant part 6l5 F.2d 1100 (8th Cir. 1980). Absent such a showing, the employer is not obligated to provide the requested information.

Discussion

We find that the Respondent was not obligated to provide the Union with the requested information about subcontracting. Insofar as the judge found no merit to the allegations, we agree with her for the reason she cited and those set forth below. However, contrary to the judge's conclusions on those allegations that she upheld, we find that the Union failed to adequately support the relevance of the information. As previously shown, the requested information was not presumptively relevant because it concerned subcontracts. *Richmond Health Care*, supra. Further, the information's relevance was not apparent from the surrounding circumstances. Pursuant to section 23 of the collective-bargaining agreement, the Respondent could subcontract, provided that the subcontracting did not result in a termination, layoff or a failure to recall unit employees from layoff. However, the Union made no such claim. The Union explained only that it "observed that there [have] been a number of subcontracts within Disneyland for work covered by the agreement"; that it believed there had been an increase in subcontracts; and that "at least one iron worker has retired and not been replaced [and] no new steward has been hired at the theme park [thus] [i]t is plain that Disneyland is reducing its workforce and subcontracting additional work." We find these explanations insufficient, under the circumstances, to explain the relevance of the requested subcontract information. There was no claim that any employee had been terminated or laid off, and no claim that any employee, previously laid off, had not been recalled. Further, there was no claim that any such action was caused by subcontracting. Given that the unit appears to be sizeable,[6] the Respondent's failure to hire a replacement for one retiring employee does not, by itself, reasonably suggest that the Respondent was not honoring the collective-bargaining agreement. In order to show the relevance of an information request, a union must do more than cite a provision of the collective-bargaining agreement. It must demonstrate that the contract provision is related to the matter about which information is sought, and that the matter is within the union's responsibilities as the collective-bargaining representative. Here, it has not been shown that the Union had a reasonable belief supported by objective evidence that the information sought was relevant. Therefore, we find that the Union failed to meet its burden. Compare *Schrock Cabinet Co.,* supra (relevance demonstrated).

Pratt & Lambert, 319 NLRB 529, (1995) cited by the dissent, actually supports our view. In that case, the union showed that three employees had lost their jobs, and no loss was due to retirement. By contrast, the Union here showed one loss, and that was due to retirement. It was not due to any of the events which would trigger an obligation to furnish information, i.e., termination or layoff or failure to recall.

current law, that a union must demonstrate the relevance of information requests concerning nonunit information, such as information concerning subcontracting.

[4] Our dissenting colleague contends that *Knappton Maritime Corp.* is inapplicable to the instant case because there, the information request concerned the existence of an alter ego relationship. She contends that the Board applies a different standard to information requests concerning subcontracting than it does alter ego relationships. However, her reliance on *Southern California Gas Co.*, 344 NLRB 231 (2005), is to no avail. In that case, while the judge did discuss the need for an information request to have a "logical foundation" and "factual basis[,]" he also found that there was "[a]mple objective evidence" to support the union's information request. Id., slip op. at 6. In making this finding, the judge referenced, inter alia, *Shoppers Food Warehouse*, 315 NLRB 258 (1994), a case, like *Knappton*, which concerned an alleged alter ego relationship. In sum, the Board applies a uniform standard for evaluating the relevance of information requests involving matters outside the bargaining unit, although it has sometimes articulated this standard using slightly different language.

[5] The union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information. *Island Creek Coal*, 292 NLRB 480, 490 fn. 19 (1989). See also *Schrock Cabinet Co.*, 339 NLRB 182 fn. 6 (2003).

[6] Although the exact size of the unit is not clear, the fact that the unit is comprised of at least 53 job classifications suggests that this is a large unit.

We recognize that article 23 begins with a general sentence prohibiting the Respondent from subcontracting "for the purpose of evading its obligations under this Agreement." However, even assuming arguendo that this sentence is to be read independently from the remainder of the article, the Union never made the claim that any subcontracting had that evasive purpose. Nor were the surrounding circumstances such that the Respondent should have been aware that this was the Union's concern, and was its basis for requesting the information.

Finally, the judge relied on Union Business Agent Michael Couch's testimony, at the hearing, in finding that the Union's concern was that the Respondent was possibly evading its agreement obligations, and that the Union thereby demonstrated the relevance of the requested information. Michael Couch testified that he "noticed our guys, our bargaining unit employees in the shop, were sitting in the shop while non-union people were out there doing the work they normally do, which, to me, is a violation of the agreement." That testimony suggests, at most, that work was being subcontracted to nonunionized employers. It does not suggest, or even claim, that subcontracting caused terminations, layoffs, or nonrecalls. Nor does the testimony show that any subcontracting had an evasive purpose. Couch's testimony cannot serve to establish that the Union provided to the Respondent a sufficient factual basis to establish relevance at the time the information request was made.[7] Furthermore, relevance was not shown for the first time at the hearing. As mentioned above, Couch's testimony did not explain how the requested information would be relevant to support an arguable violation of the contract.

We do not suggest that the union, in order to acquire the information must prove a breach of contract. We simply conclude that the union must claim that a specific provision of the contract is being breached and must set forth at least some facts to support that claim. For example, if the Union here had clarified that employees had been laid off, and if it had backed up that claim with facts showing the layoffs, a different result may well have been obtained.[8]

ORDER

The complaint is dismissed.

[7] *Allison Co.*, supra at 1367 fn. 23 (2000); *Brazos*, 241 NLRB at 1018–1019. We do not pass on whether such a belated request, if supported, would trigger an obligation to supply the information.

[8] Because the Union failed to back up its claim, we disagree with our dissenting colleague's statement that "the Union's factual assertions regarding the apparent erosion of the bargaining unit, coupled with its reference to the contract terms concerning subcontracting," satisfied its burden.

MEMBER LIEBMAN, dissenting.

In finding that the Union was not entitled to the subcontracting information it requested, the majority reaches a result that is at odds with well-settled principles. Here, the parties' collective-bargaining agreement includes a provision on subcontracting, and the Union invoked that provision in seeking information, citing facts that prompted its concern that the agreement was being violated. No more was required to trigger the Respondent's duty to disclose the requested information. The majority's approach here would effectively require proof that the Union had a meritorious grievance. But that is not the law.

I.

A liberal, "discovery-type standard" governs information-request cases under Section 8(a)(5) of the Act. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). As the majority acknowledges, this standard applies even in subcontracting cases, where the relevance of the information must be established, not presumed.[1] All that is required is a showing of a "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Id. Thus, the "union's burden is not an exceptionally heavy one." *SBC Midwest*, 346 NLRB 62, 64 (2005) (finding an 8(a)(5) violation involving request for subcontracting information).

The asserted need to police compliance with a contract provision on subcontracting can establish the relevance of subcontracting-related information, apart from any showing that an actual grievance has or would have merit. See, e.g., *Schrock Cabinet Co.*, at 182 fn. 6 supra (union established relevance by advising employer that it requested information "for the purpose of assessing potential grievances pursuant to the parties' existing collective-bargaining agreement").[2] Only where a union has "no basis for even suspecting that the [employer] might be in breach" of a contractual subcontracting provision

[1] Contrary to the Board's current approach, there are good reasons to treat subcontracting information as *presumptively* relevant, particularly where the information is sought in connection with a potential or pending contractual grievance. Subcontracting is a mandatory subject of bargaining under the Act. *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 213–214 (1964). And when a collective-bargaining agreement specifically addresses subcontracting, the union's efforts to police the agreement obviously implicate its representational function.

[2] Indeed, in *Meeker Cooperative Light & Power Assn.*, 341 NLRB 616, 618 (2004), the Board found an 8(a)(5) violation even where the collective-bargaining agreement had *no* specific provision related to subcontracting. See also *W-L Molding Co.*, 272 NLRB 1239, 1240–1241 (1984) (finding violation despite contractual provision reciting that "nothing in this Agreement shall be construed or interpreted to restrict the right of the Company to subcontract production," based on asserted attempt by employer to evade striker-recall agreement).

will the Board reject a claim for subcontracting information. *Detroit Edison Co.*, 314 NLRB 1273, 1275 (1994).[3]

II.

The facts here are straightforward. Over the course of more than 4 months, the Union requested, and the Respondent declined to provide, information relating to the Respondent's subcontracting practices.

With respect to Disneyland Park, article 23 of the agreement provides that the Respondent "will not subcontract work for the purpose of evading its obligations under this Agreement," but permits contracting under specified circumstances. Those circumstances include where subcontracting will not result in the termination, layoff, or failure to recall employees. With respect to Disney's California Adventure, the agreement granted the Respondent the "unrestricted right to subcontract or outsource work," except where the subcontracting is permanent and results in layoffs.

Beginning with a letter dated February 11, 2001, the Union stated that it had observed "a number of subcontracts within Disneyland for work covered by the agreement within Local 433's jurisdiction" and expressed its "concern that such subcontracting may not comply with the terms of the agreement." The Union asked the Respondent to provide a list of all subcontractors that performed work within its jurisdiction since January 1, 1999, the date of the subcontract, the nature of the work, the dates on which it was performed, and the name of the subcontractor. The Union also sought to review the subcontracts and associated files regarding the bidding and performance of those contracts.

Describing the task of gathering more than 3 years of data as "onerous" and "oppressive," the Respondent asked the Union for a more detailed explanation of relevance, as well as whether the Union was claiming that subcontracting had resulted in the loss of work for permanent employees.

The Union modified its request, asking only for the past year's subcontracts and stating it had observed that the number of subcontracts had increased. The Respondent replied that the contract allowed for subcontracting absent a layoff, and repeated its request for a more detailed explanation of relevance. The Union asserted that the Respondent was reducing its work force and pointed to the Respondent's failure to replace retired iron worker Richard Halashak, and to the fact that no steward had been hired for the California Adventure theme park. The Respondent countered that not replacing one employee is not a contract violation and characterized the request for the past year's subcontracting history as unreasonable. The Union answered that it was asking only for subcontracts affecting work within its jurisdiction. The Respondent did not reply.

At the hearing in this case, the Union reiterated the basis for the information requests. Business Agent Couch testified that "our guys, our bargaining unit employees in the shop, were sitting in the shop while non-union people were out there doing the work they normally do, which, to me, is a violation of the agreement."

III.

The majority holds that the "Union failed to adequately explain the relevance of the requested information." In the majority's words:

> In order to show the relevance of an information request, a union must do more than cite a provision of the collective-bargaining agreement. It must demonstrate that the contract provision is related to the matter about which the information is sought, and that the matter is within the union's responsibilities as the collective-bargaining representative.

But this test, as the majority articulates it, was met. In seeking information about subcontracting, the Union cited a contract provision that governed subcontracting; the provision obviously was "related to the matter about which the information [was] sought." Policing the contract, in turn, obviously was part of the Union's representative responsibilities.[4] This is not a case, then, like *Island Creek Coal*, supra at fn. 4, where the union merely offers a "generalized, conclusionary explanation," such as the need "to intelligently and effectively represent the bargaining unit employees," with no mention of a possible contract violation at all. 292 NLRB at 490 fn. 19.

The real crux of the majority's position is its view that the Union failed to point to facts that "reasonably suggest that the Respondent was not honoring the collective-bargaining agreement" and that the Union did not demonstrate "a reasonable belief supported by objective evidence that the information sought was relevant." The majority interprets the agreement to prohibit subcontracting only where it results in a layoff or a failure to recall employees from layoff, and observes that the Union cited

[3] As one leading treatise observes, "a union is entitled to information regarding the subcontracting of work even though the employer insists it is complying with the contract requirements." 1 American Bar Association, Section of Labor & Employment Law, *The Developing Labor Law* 936 (5th ed. John E. Higgins Jr., ed. 2006) (footnote collecting cases omitted).

[4] "Without question, information concerning subcontracting of unit work is relevant to a union's performance of its representational functions." *Island Creek Coal Co.*, 292 NLRB 480, 490 fn. 18 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990). See, e.g., *AK Steel Corp.*, 324 NLRB 173, 184 (1997); *Ohio Power Co.*, 216 NLRB 987, 992 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976).

no actual layoff or failure to recall. As for the agreement's prohibition against subcontracting by the Respondent "for the purpose of evading its obligations under this Agreement," the majority asserts that the Union neither claimed that subcontracting had that purpose, "nor were the surrounding circumstances such that the Respondent should have been aware that this was the Union's concern."

In apparently demanding reliable, objective evidence that an actual violation of the contract has occurred *before* information must be provided, the majority sets the bar for the Union higher than our precedent supports.[5] See, e.g., *W-L Molding Co.*, supra, 272 NLRB at 1240 (actual instances of contract violations not required, nor must information that triggered information request be "accurate, nonhearsay, or even ultimately reliable"). See also *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186–1188 (1997), enfd. 157 F.3d 222 (3d Cir. 1998).

Here, the Union pointed not only to a relevant contractual provision, but also to facts prompting its concern that the contract might have been violated: an apparent increase in the volume of subcontracts and a possible decrease of two bargaining-unit positions (the Respondent's failure to replace a retired employee and its failure to hire a steward), coupled with the union business agent's observation that unit employees seemed to be idle while subcontractors were busy with bargaining-unit work.[6] Given the contract's broad prohibition against subcontracting "for the purpose of evading . . . obligations" under the agreement, this factual basis was sufficient to support the Union's information request, even without an actual layoff.[7] In the circumstances of this case, the Union's factual assertions regarding the apparent erosion of the bargaining unit, coupled with its reference to the contract terms concerning subcontracting, fully satisfied the discovery-type standard that governs here.

The Board's precedent is instructive on this point. In *Pratt & Lambert, Inc.*, 319 NLRB 529 (1995), the union sought subcontracting information to police compliance with a contract provision that permitted subcontracting of maintenance work, provided it did not "result in the displacement" or "lead[] to layoff" of any maintenance employees. The Board rejected the employer's contention that the information sought was irrelevant because there had been no displacement or layoff of employees, citing the union's demonstration that the maintenance department "had lost approximately three employees over the course of a year and that those employees have not been replaced." 319 NLRB at 529 fn. 1. The Board observed that the evidence did not establish that the lost employees had retired, and that the interpretation of the contract provision was "not an issue that is properly before the Board. Id. The Union's showing here is comparable. While it may not suffice to demonstrate a violation of the parties' agreement, it is enough to trigger the Respondent's duty to disclose the requested information.

Tellingly, the majority relies on no case law that genuinely supports its position. In passing, the majority cites clearly inapposite summary judgment decisions.[8] The majority also cites *Schrock Cabinet Co.*, supra, but there the Board *found* a violation of Section 8(a)(5), relying on the union's assertion that it sought subcontracting information to consider potential grievances pursuant to the collective-bargaining agreement. 339 NLRB at 182 fn. 6. The Board reiterated that the "potential merits of any particular grievances" are immaterial. Id.

[5] To begin, the majority errs in apparently relying on *Knappton Maritime Corp.*, 292 NLRB 236 (1988), to assert that a union must demonstrate a "reasonable belief supported by objective evidence for requesting . . . information" that is not presumptively relevant. *Knappton* involved not subcontracting information, sought in connection with the possible violation of a contractual provision, but rather information related to the existence of an alter ego operation. The majority cites no Board decision to support its suggestion that this standard applies in cases involving information requests concerning subcontracting, where a union in good faith invokes a contractual provision on that subject. Compare *Southern California Gas Co*., 344 NLRB 231, 236–237 (2005) where the Board adopted a judge's decision invoking a differently articulated standard (holding that information request concerning subcontractors, based on safety concerns, must be supported by "logical foundation" and "factual basis").

[6] The majority "assum[es] arguendo that relevance can be explained for the first time at the hearing." Board precedent, however, has long established this point. See, e.g., *Brazos Electric Power Cooperative*, 241 NLRB 1016, 1019 (1979), enfd. in relevant part 615 F.2d 1100 (5th Cir. 1980). See also *Contract Flooring Systems*, 344 NLRB 925 (2005).

[7] That provision sharply distinguishes this case from *Connecticut Yankee Atomic Power Co.*, 317 NLRB 1266 (1995), where the contract prohibited *only* subcontracting that resulted in "loss of continuity of employment or opportunities for permanent promotions" for unit employees and the number of unit positions during the relevant period had substantially *increased*.

[8] The majority's reliance on *Richmond Health Care*, 332 NLRB 1304 (2000), in which the Board granted in part and denied in part the General Counsel's motion for summary judgment, is misplaced. In that case, the Board found that before bargaining for an initial contract, an employer unlawfully failed to provide a newly-certified union with a variety of information regarding the unit employees, but remanded for hearing the issue of whether information concerning subcontracting was unlawfully withheld. Most significantly, there was no contract in existence between the parties. *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995), enfd. 108 F.3d 1182 (9th Cir. 1997), also cited by the majority, involved the same situation. In this case by contrast, the Respondent and the Union were parties to a collective-bargaining agreement and the Union's information request related directly to the Respondent's compliance with a subcontracting provision.

IV.

A union surely is not required to wait for the substantial erosion of bargaining unit work before it may properly seek information necessary to police compliance with a collective-bargaining agreement's subcontracting provision. Vigilant monitoring—what the Union sought to practice here—is consistent with the duty of fair representation.

Contrary to the majority, I would order the Respondent to provide the Union with the subcontracting information that it requested: a list of subcontractors performing work, the date of each subcontract, when the work was performed, and the name of the subcontractor. The judge correctly ordered production of this information. I would go further, however, in ordering the Respondent to permit the Union to review the subcontracts themselves and the Respondent's files regarding the bidding of subcontracts and their performance. That remedy is necessary to enable the Union to grasp the scope, scale, and nature of the Respondent's subcontracting practices, and their congruity with the collective-bargaining agreement.[9]

Alan L. Wu, Esq., for the General Counsel.
Jeffrey K. Brown, of Los Angeles, California, for the Respondent.
Tom B. Fox, Director, Labor Relations, Disneyland Resort, of Anaheim, California, for the Respondent.
David A. Rosenfeld, Esq., of Oakland, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LANA H. PARKE, Administrative Law Judge. This case was tried in Los Angeles, California, on March 31, 2003. Pursuant to charges filed by International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL–CIO (the Union), the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing (the complaint) on October 9, 2002.[1] The complaint alleges that Disneyland Park and Disney's California Adventure, Divisions of Walt Disney World Co. (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to furnish the Union with information necessary for, and relevant to, the Union's collective-bargaining representation obligations.

On the entire record and after considering the briefs filed by the General Counsel and Respondent and the oral argument of the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation, with its primary offices and amusement park located in Anaheim, California, is engaged in the business of operating retail hotel and entertainment facilities. During the representative 12-month period preceding the complaint, Respondent derived gross revenues in excess of $500,000 and purchased and received at its amusement park goods valued in excess of $50,000 directly from points outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.[2]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Collective-Bargaining Relationship

Respondent and the Union have been parties to successive collective-bargaining agreements, the latest of which is effective by its terms from March 1, 1998, to February 28, 2005 (the agreement). The agreement covers at least 53 separate work classifications associated, primarily, with facility maintenance, repair, and rehabilitation work.[3] The agreement was initially negotiated to run until February 28, 2003. In 2000, the parties agreed that the terms of the agreement would cover, as modified, a newly constructed and conjoining amusement park, Disney's California Adventure. The agreement was extended by 2 years; the modifications are reflected in the addendum to the agreement and apply only to Disney's California Adventure. The provisions relating to subcontracting are as follows:

> *SECTION 23*
> *SUBCONTRACTING*
>
> During the terms of the Agreement, the Employer agrees that it will not subcontract work for the purpose of evading its obligations under this Agreement. However, it is understood and agreed that the Employer shall have the right to subcontract when: (a) where such work is required to be sublet to maintain a legitimate manufacturers' warranty; or (b) where the subcontracting of work will not result in the termination or layoff, or the failure to recall from layoff, any permanent employee qualified and classified to do the work; or (c) where the employees of the Employer lack the skills or qualifications or the Employer does not possess the requisite equipment for carrying out the work; or (d) where because of size, complexity or time of completion it is impractical or uneconomical to do the work with Employer equipment and personnel.[4]
>
> Modifications applicable to Disney's California Adventure read:
>
> Section 23. Subcontracting
>
> The 1998 Maintenance Agreement at Disneyland is hereby modified to reflect that the prohibitions pertaining to subcontracting set forth in Section 23 shall have no force or effect and shall be replaced as follows:

[9] See, e.g., *SBC Midwest*, supra, 346 NLRB 62, 65 (2005).
[1] All dates are in 2002, unless otherwise indicated.
[2] Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.
[3] The classifications are listed in schedule A, subsection V of the agreement.
[4] This subcontracting provision applies only to the amusement park Disneyland.

A. With respect to any operation as set forth in Section 2 (Recognitions), B.1 and/or B.2., of this Agreement, the Employer shall have the unrestricted right to subcontract or outsource this work or operation even if at some date subsequent to the effective date of this Agreement the Employer chooses to operate any of said facilities or operations under the terms of this Agreement.

B. 1.a. With respect to any operation initially operated by the Employer under the terms of this Agreement, the Employer shall have the unrestricted right to subcontract or outsource this work/operation, but will discuss with the union the impact of such a decision prior to engaging in such subcontracting or outsourcing of work. Within thirty (30) days of the final selection of a vendor, the Company will provide the union with a description of the work to be performed by the vendor and the reasons that the Company is planning on subcontracting or outsourcing work. The union may then propose alternative or additional vendors for consideration by the Company prior to the final vendor selection being made. However, the final selection of the vendor shall be at the discretion of the Company.

b. Where the decision of the Company to outsource and/or subcontract work on a permanent basis, as outlined in paragraph B. 1 above, results in the layoff of Regular employees, the Company agrees to subcontract or outsource exclusively to "union contractors . . . [.]

. . . .

2. The process described . . . above shall apply only to work that is being permanently subcontracted or outsourced and not to any work that is being subcontracted or outsourced on a temporary or seasonal basis, as well as for special events or one time events. . . [.] For this type of work or operation, the Company shall have the unrestricted right to subcontract or outsource to the vendor of its choice.[5]

B. The Union's Request for Information

In late 2001, at a meeting between Respondent and the Craft Maintenance Council, Couch expressed the Union's concern with Respondent's subcontracting of bargaining-unit work. In early 2002, while present at the amusement park, Couch saw employees of two companies, Welding Unlimited and Parrot Construction, performing work he believed to be within the bargaining-unit parameters. Couch could not find the companies' names on a list of employers signatory to collective-bargaining agreements with the Union. He believed the two companies to be "nonunion" based on that and on union steward reports.[6] At that time, and at all relevant times, no employee covered by the agreement's unit description was on layoff.[7]

By letter dated February 11, the Union's attorney, David A. Rosenfeld (Rosenfeld), wrote to Respondent in pertinent part as follows:

> . . . The Union has observed that there [have] been a number of subcontracts within Disneyland for work covered by the agreement within Local 433's jurisdiction. The Union is concerned that such subcontracting may not comply with the terms of the agreement.
>
> Please provide a list of all subcontractors which have performed work within Local 433's jurisdiction for the period of January 1, 1999 to present. For each such subcontract, provide the date of the subcontract, the nature of the work, the dates upon which it was performed and the name of the subcontractor.
>
> Please allow us an opportunity to review the subcontracts and any files which Disneyland maintains regarding the bidding of that contract and the performance of the contract.

By letter dated March 11, Jennifer L. Larson (Larson) labor/cast relations manager for Respondent answered, in pertinent part, as follows:

> As you know, Section 23 of the Collective Bargaining Agreement specifically allows for subcontracting of any work under the circumstances listed. In fact, one of the terms of that section provides that subcontracting is allowed when "it will not result in the termination or layoff, or the failure to recall from layoff, any permanent employee qualified and classified to do the work." Is the Union claiming that this condition exists? Attempting to gather information regarding subcontracts over a three plus year period would be quite onerous, oppressive and, in light of the explicit language of the contract, apparently unnecessary. In any event, we would be happy to give your request further consideration if you could explain with some level of detail the relevance of this request. Additionally, if you could explain why you want us to go back for more than three years, especially since any conceivable grievance must be filed within 15 days of the occurrence or it is waived, it would be greatly appreciated.

The following exchange of letters, in pertinent part, then followed:

Letter dated March 22, Mr. Rosenfeld to Ms. Larson:

> This will acknowledge receipt of your letter of March 11. Why [don't] you begin by giving this information for the last

[5] These provisions are modifications of the agreement made in 2000 and apply only to Disney's California Adventure.

[6] Union steward, Thomas G. Martin, confirmed he had told Couch that employees of Welding Unlimited and a Parrot Construction subcontractor had performed work that fell within the agreement unit description and that the employees had said they were not members of the Union.

[7] As necessary, Respondent hires temporary employees to supplement the work force as in a recent renovation of the Matterhorn ride. At the conclusion of the work, Respondent issues such employees a notice that states "end of assignment." The agreement provides, at Section 21 C.4, that such temporary employees "shall not be utilized longer than 180 consecutive calendar days as a Casual-Temporary employee" without being converted to regular employee status. No party contends that such temporary employees are "laid off" when their work assignments end.

year. The reason for this is that the Union believes that there has been an increase in subcontracts.

Letter dated April 3, Larson to Rosenfeld:

> As I explained in my previous letter, Section 23 of the Collective Bargaining Agreement specifically allows for subcontracting of any work under the circumstances listed. As there have been no layoffs of employees represented by the Iron Workers Local 433, we do not believe that this is an issue at this time. As I also explained in my previous letter, we would be happy to give your request further consideration if you could explain with some level of detail the relevance of this request, especially since any conceivable grievance must be filed within 15 days of the occurrence or it is waived.

Letter dated April 9, Rosenfeld to Larson:

> At least one iron worker has retired and has not been replaced. That ironworker is Richard Halashack. Additionally, no new steward has been hired at the new theme park. It is plain that Disneyland is reducing its work force and subcontracting additional work. It is for these reasons that the information is requested.

Letter dated May 10, Rosenfeld to Larson:

> Enclosed is my letter of April 9, to which I have not had a response. Please respond.

Letter dated April 10, Larson to Rosenfeld:

> Despite requesting some level of detail in your request, which is broad, burdensome to gather, and apparently unnecessary, you have failed to provide any reason which would lead to a viable claim under our Collective Bargaining Agreement. The Company has the explicit right to determine the number of employees and how they are utilized to run the business. You mention only one employee, who retired, and was not replaced. Such a determination is clearly within our rights under Section 6 of our Collective Bargaining Agreement, Management's Rights and is not a violation of Section 23, Subcontracting.
>
> The Company sees no reasonable claim that would necessitate providing a list of all subcontractors, the date of the subcontract, the nature of the work, the dates upon which it was performed and the name of the subcontractor, as requested.

Letter dated June 17, Rosenfeld to Larson:

> Your letter of May 10 takes the position that Disneyland will not provide any of the subcontracts. I want to make it plain that we are seeking only subcontracts that involve work arguably or possibly performed by Iron Workers.

At the hearing, Michael Couch (Couch), union business agent, testified that he noticed that "our guys, our bargaining unit employees in the shop, were sitting in the shop while nonunion people were out there doing the work they normally do, which, to me, is a violation of the agreement."

C. Positions of the Parties

The General Counsel contends the Union needs the requested subcontracting information to perform its contract administration duties. The request, which relates to bargaining unit employees, meets the Board's broad discovery-type relevance standard. Since the information sought concerns subcontractors who employ nonbargaining unit employees, Board law requires a special showing of relevance, which burden the General Counsel argues the Union has satisfied by showing a reasonable belief supported by objective evidence that a violation of the agreement may have occurred and that the requested information would be useful in determining whether grounds exist for filing a grievance or unfair labor practice charges.

The Union argues that Respondent has not shown the request for information is burdensome[8] that the Union has never waived its right to such information, and that the information is relevant to the following appropriate concerns: (1) as a basis to approach Respondent with reasons why they should not subcontract, (2) to determine whether the subcontracts comply with the subcontracting provisions of the agreement, (3) to determine whether the contract has been complied with, and (4) to explore potential grievances in such contractual areas as the parties' intent to promote harmony between employer and employees, the restriction of subcontracting for the purpose of evading the agreement, and the application of the new construction provisions of Section 31.[9] The Union also argues that it is entitled to the information as it has never "waived [its] rights to bargain over subcontracting, either the decision or the effects, during the life of the agreement."

Respondent's position is that where, as here, requested information is not presumptively relevant, a requesting union must make a "precise" showing of relevance. According to Respondent, the only acceptable showing of relevance must relate to the subcontracting's direct effect on unit employment. Relying on *Detroit Edison Co.,* 314 NLRB 1273 (1994), Respondent argues that unless the Union can show or colorably claim that Respondent's subcontracting resulted in the contractually prohibited "termination or layoff, or failure to recall from layoff" of a bargaining-unit member, it has not established the necessary threshold relevance to justify its request for information.

D. Discussion

Under Section 8(a)(5) and 8(d) of the Act, an employer must furnish a union with requested relevant information to enable it to represent employees effectively in administering and policing an existing collective-bargaining agreement. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967), *A-Plus Roofing, Inc.,* 295 NLRB 967, 970 (1989) enfd. *NLRB v. A-Plus Roofing, Inc.,* 39 F. 3d 1410 (9th Cir. 1994). Information that re-

[8] Although Respondent's reply letters to the Union speak of the burdensome nature of the request, the evidence did not establish onerousness, and Respondent does not defend its refusal to give the information on that basis.

[9] Sec. 31 provides for new construction pay to unit employees involved in the "building or erecting of totally new rides or new buildings. . . [.]"

lates directly to the terms and conditions of employment of the employees represented by a union is presumptively relevant as is information necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration.

As the General Counsel concedes, information about subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, does not constitute presumptively relevant information. *Excel Rehabilitations & Health Center,* 336 NLRB No. 10 fn. 1 (2001) (not reported in Board volumes); *Richmond Health Care,* 332 NLRB 1304 (2000); *Detroit Auto Auction, Inc.*, 324 NLRB No. 143 (1997); (not reported in Board volumes); *Associated Ready Mixed Concrete,* 318 NLRB 318 (1995). Therefore, "a union seeking such information must demonstrate its relevance." *Excel Rehabilitations & Health Center,* supra at fn. 1, and cases cited therein. This requirement is not unduly restrictive. A union need only meet a liberal "discovery-type standard," that is, a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industries Co.,* supra at 437; *Pittston Coal Group, Inc.,* 334 NLRB 690, at slip op. 3 (2001), and cases cited therein. If the standard is met, the information must be produced. *Super Valu Stores,* 279 NLRB 22 (1986). In determining relevance, the Board recognizes that "a union's representation responsibilities . . . encompass, among other things, administration of the current contract and continual monitoring of any threatened incursions on the work being performed by bargaining unit members." *Detroit Edison Co.,* supra at 1275. A union must explicate the relevance of requested information with some precision,[10] and a generalized conclusionary explanation of relevance is "insufficient to trigger an obligation to supply information that is on its face not presumptively relevant." *Island Creek Coal Co.,* 292 NLRB 480, 490 fn. 19 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990), citations omitted. However, a union need not demonstrate accuracy or reliability of facts relied on to support its request and must only show that it has a reasonable basis to suspect a breach of the collective-bargaining agreement. See *Crowley Marine Services,* 329 NLRB 1054, 1060 (1999).

Respondent points out that the agreement's subcontracting provisions give Respondent a nearly unfettered right to subcontract work that could be performed by unit employees except where the subcontracting would result in the termination or layoff, or the failure to recall from layoff, any qualified unit employee.[11] Respondent is correct that the agreement clearly establishes the conditions under which it may subcontract. Despite the Union's argument that it has not waived its right to bargain over subcontracting during the life of the agreement, there is no midterm reopener provision in the agreement; therefore, the agreement forecloses renegotiation of subcontracting issues during its term. Further, there is no evidence that any of the subcontracting conditions were unmet. However, those facts do not dispose of the issue herein. Information requested to enable a union to assess whether an employer's subcontracting has violated a collective-bargaining agreement and to assist a union in deciding whether to pursue a grievance is relevant to a union's representative responsibilities. *AK Steel Corp.,* 324 NLRB 173, 184 (1997); *Island Creek Coal Co.,* supra. Here, the Union specified the relevance of the requested information in its April 9 letter to Respondent by expressing its concern that Respondent's subcontracting might be an impermissible attempt to reduce the unit work force.

In section 23 of the agreement, Respondent "agrees it will not subcontract work for the purpose of evading its obligations under this Agreement." While the Union did not note that specific provision in its demands for information, the Union stated in its original, February 11 request that it was "concerned that [Respondent's] subcontracting may not comply with the terms of the agreement." The Union thereafter noted in its April 9 letter that one unit member had retired and had not been replaced and that no new steward had been hired at Disney's California Adventure. Essentially, the Union charged Respondent with reducing the unit work force through attrition or refusal to hire and supplanting unit employees with subcontract workers. The Union could reasonably view such conduct as an attempt by Respondent to erode unit work and, thereby, to evade its obligations under the agreement.[12] Whether the Union's view is accurate or persuasive is unimportant. *Crowley Marine Services,* supra at 1062. Respondent's failure to replace a retired unit employee, to hire a new steward, or to utilize unit employees, while not proving or even red flagging any contract infraction, are factors that elevate the Union's concern above frivolous suspicion or a mere fishing expedition.[13] Therefore, the Union is entitled to explore more fully the question of whether Respondent seeks to evade its agreement obligations. Respondent's argument that the information request can only be relevant if unit employee layoff or recall denial exists ignores the Union's legitimate concern that Respondent may be attempting to evade the agreement by reducing the work force.

In light of the Board's liberal discovery-type standard for evaluating information relevancy, the Union has asserted an arguably valid reason for seeking, in the first part of its information request, the following information: a list of all subcontractors performing work within the Union's jurisdiction for the period of January 1, 1999, to present, the date of each subcontract, the nature of the work, when the work was performed, and the name of the subcontractor. *Detroit Edison,* supra, relied on by Respondent does not dictate a different result. The

[10] *Westinghouse Electric Corp.,* 239 NLRB 106, 107 (1978).

[11] As to Disney's California Adventure, Respondent may subcontract even if doing so results in the layoff of unit employees. Certain notification and permanent subcontracting provisions, as set forth in the agreement addendum, are not at issue herein.

[12] Although not communicated to Respondent, Couch believed that Respondent inexplicably underutilized unit employees while subcontractors performed customary unit work and that the subcontractors were "nonunion." The Union apparently relied on Couch's perceptions in formulating the information request, and his perceptions support the Union's position that it was concerned about Respondent's possible evasion of agreement obligations.

[13] Thus, cases such as *Detroit Edison Co.,* supra (reasons not logically or rationally related to the information requested), or *Uniontown County Market,* 326 NLRB 1069 (1998) (failure to meet burden of showing a reasonable objective basis for request), do not apply.

union in that case sought subcontracting cost data, which had no apparent connection to contractual provisions, and the union conceded that the data would not support any claim of a contract breach. While the reasoning of *Detroit Edison* applies to the second half of the Union's request, as set forth below, it does not apply to the first half. Information regarding subcontractors performing work within the Union's jurisdiction, along with subcontract dates, the nature of the work, when the work was performed, and the name of the subcontractor may reasonably be reviewed and analyzed to determine whether evidence exists of an attempt to evade contract obligations through erosion of unit work.[14] The Union need not show that the requested information will be dispositive of the unit work-erosion question but only that it is relevant. I conclude that the Union has demonstrated the requisite relevance and is entitled to the above information.

The latter part of the Union's information request, i.e., the request to review Respondent's subcontracts and files regarding the bidding and the performance of the subcontract, requires further analysis. This latter information does not appear to be of "probable or potential relevance"[15] to the question of whether Respondent was evading its agreement obligations or to any of the other possible contract violations suggested by the Union. In its correspondence with Respondent, the Union explained, variously, that it needed the information because the subcontracting might not comply with the terms of the agreement, that the Union believed there had been an increase in subcontracts, and, as discussed above, that the Union suspected Respondent was reducing its work force. In his oral argument, Respondent's counsel specified potential contract violations the Union wished to consider such as the provision relating to the parties' intent to promote harmony between employer and employees and the application of the new-construction provisions of Section 31 of the agreement. Neither the Union's counsel nor counsel for the General Counsel explained how obtaining information concerning subcontract bidding and performance would assist the Union in determining if any agreement violation had occurred or in formulating a grievance. The Union's generalized and conclusionary explanations of its bases do not trigger an obligation to provide this information. *Island Creek Coal Co.,* supra.[16] In the circumstances, I conclude the Union has not demonstrated any logical foundation or factual basis for requesting information regarding subcontract bidding or performance.

Accordingly, I find the General Counsel met his burden of proving that Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the following information to the Union: a list of all subcontractors performing work within the Union's jurisdiction for the period of January 1, 1999, to present, the date of each subcontract, the nature of the work, when the work was performed, and the name of the subcontractor. I further find that the General Counsel failed to meet his burden of proving that Respondent violated Sections 8(a)(5) and (1) of the Act by failing to furnish the following information to the Union: review of subcontracts and any files which Respondent maintains regarding the bidding of said subcontracts and their performance. Therefore, I recommend the complaint be dismissed as to this latter request for information.

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. Employees employed in the classifications listed in schedule A, subsection V of the agreement between Respondent and the Union constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material, the Union has been, and is now, the exclusive collective-bargaining representative of Respondent's employees in the above unit within the meaning of Section 9(b) of the Act.
5. By refusing to provide the following information to the Union on and after February 11, 2002, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) and (1) of the Act: a list of all subcontractors performing work within the Union's jurisdiction for the period of January 1, 1999, to present, the date of each subcontract, the nature of the work, when the work was performed, and the name of the subcontractor.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
7. Respondent has not otherwise violated the Act.

REMEDY

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

[Recommended Order omitted from publication.]

[14] The instant situation is different from that in *Connecticut Yankee Atomic Power Co.,* 317 NLRB 1266, 1268 (1995), where the Board rejected a union's argument it had a reasonable belief in and concern about "potential erosion of unit work," noting such a belief was unsupported by the evidence, which showed bargaining unit positions had substantially increased. Here, no evidence has been produced to refute the Union's asserted belief.

[15] *Detroit Edison Co.,* supra at 1274.

[16] The Union's argument that it has never waived its right to seek subcontracting information begs the question. Irrespective of waiver, the Union must demonstrate relevance.