Murray American Energy, Inc. and The Monongalia County Coal Company, a single employer *and* United Mine Workers of America, District 31, Local 1702 AFL–CIO, CLC

Murray American Energy, Inc. and The Harrison County Coal Company, a single employer *and* United Mine Workers of America, District 31, AFL–CIO, CLC. Cases 06–CA–215195 and 06–CA–218979

December 15, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On February 20 and July 20, 2018, United Mine Workers of America, District 31, Local 1702 AFL–CIO ("Local 1702") filed a charge and an amended charge, respectively, against Murray American Energy, Inc. and the Monongalia County Coal Company in Case 06–CA–215195. On April 23 and August 24, 2018, United Mine Workers of America, District 31, AFL–CIO ("District 31") filed a charge and an amended charge, respectively, against Murray American Energy, Inc. and the Harrison County Coal Company in Case 06–CA–218979. On August 31, 2018, the General Counsel issued an Order consolidating cases, consolidated complaint, and notice of hearing in Cases 06–CA–218979 and 06–CA–215195. On July 23, 2019, the General Counsel issued an amended consolidated complaint and notice of hearing, in which he alleged that Murray American Energy, Inc. and the Monongalia County Coal Company, a single employer ("Respondent Monongalia"), and Murray American Energy, Inc. and the Harrison County Coal Company, a single employer ("Respondent Harrison") (collectively "Respondents"), violated Section 8(a)(5) and (1) of the National Labor Relations Act (NLRA or Act) by delaying in furnishing and refusing to furnish Local 1702 and District 31 (collectively "Charging Parties" or "Unions") with requested information. The Respondents filed a joint answer.

On August 15, 2019, the Respondents, the Charging Parties, and the General Counsel filed a joint motion to waive a hearing and a decision by an administrative law judge and to transfer this proceeding to the National Labor Relations Board for a decision based on a stipulated record. On October 2, 2019, the Board granted the parties' joint motion. Thereafter, the Respondents (jointly), the Charging Parties (jointly), and the General Counsel filed briefs, and the Charging Parties (jointly) and the General Counsel filed answering briefs.

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

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Murray American Energy, Inc., a company with an office and a place of business in St. Clairsville, Ohio, has been engaged in the mining and nonretail sale of coal through its wholly owned subsidiaries Monongalia County Coal Company and Harrison County Coal Company.

At all material times, Harrison County Coal Company, a company with its headquarters in St. Clairsville, Ohio, and a facility in Mannington, West Virginia, has been engaged in the mining and nonretail sale of coal, with annual gross revenues in excess of $100 million. During the 12-month period ending March 31, 2018, Murray American Energy and Harrison County Coal Company, in conducting their operations, collectively sold and shipped from the Mannington, West Virginia facility goods valued in excess of $50,000 directly to points outside the State of West Virginia.

At all material times, Murray American Energy and Harrison County Coal Company have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as a single-integrated business enterprise.

Based on the operations described above, we find that Murray American Energy and Harrison County Coal Company constitute a single-integrated business enterprise, a single employer within the meaning of the Act, and an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Monongalia County Coal Company, a company with its headquarters in St. Clairsville, Ohio, and a facility in Kuhntown, Pennsylvania, has been engaged in the mining and nonretail sale of coal, with annual gross revenues in excess of $100 million. During the 12-month period ending January 31, 2018, Murray American Energy and Monongalia County Coal Company, in conducting their operations, collectively sold and shipped from the Kuhntown, Pennsylvania facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania.

At all material times, Murray American Energy and Monongalia County Coal Company have been affiliated

business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as a single-integrated business enterprise.

Based on the operations described above, we find that Murray American Energy and Monongalia County Coal Company constitute a single-integrated business enterprise, a single employer within the meaning of the Act, and an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We further find that the United Mine Workers of America, AFL–CIO, CLC (UMWA) and Local 1702 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Stipulated Facts

At all material times, the UMWA and Respondents have been parties to a collective-bargaining agreement known as the National Bituminous Coal Wage Agreement of 2016 (NBCWA), which is effective by its terms from August 15, 2016, to December 31, 2021. The NBCWA covers the Monongalia County Coal Unit and the Harrison County Coal Unit. [1]

Subcontracting has been the subject of an ongoing dispute between the parties, resulting in more than 15 arbitration hearings during the term of the current NBCWA. Regarding that topic, Article IA(a) of the NBCWA provides:

> The production of coal, including removal of over-burden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway or rail not owned by Employer), repair and maintenance work normally performed at the mine site or at a central shop of the Employer and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this Agreement. Contracting, subcontracting, leasing and subleasing, and construction work, as defined herein, will be conducted in accordance with the provisions of this Article.

In addition, Article IA(g) states:

> (1) Transportation of Coal—The transportation of coal as defined in paragraph (a) may be contracted out under the Agreement only where contracting out such work is consistent with the prior practice and custom of the Employer at the mine; provided that such work shall not be contracted out at any time when any Employees at the mine who customarily perform such work are laid off.
>
> (2) Repair and Maintenance Work—Repair and maintenance work of the type customarily performed by classified Employees at the mine or central shop shall not be contracted out except (a) where the work is being performed by a manufacturer or supplier under warranty, in which case, upon written request on a job-by-job basis, the Employer will provide to the Chairman of the Mine Committee a copy of the applicable warranty or, if such copy is not reasonably available, written evidence from a manufacturer or a supplier that the work is being performed pursuant to warranty; or (b) where the Employer does not have available equipment or regular Employees (including laid-off Employees at the mine or central shop) with necessary skills available to perform the work at the mine or central shop.
>
> (3) The Employer may not contract out the rough grading in mine reclamation work.
>
> (4) Where contracting out is permitted under this section, prior custom and practice shall not be construed to limit in any way the Employer's choice of contractors.

Between January 23 and February 19, 2018,[2] Local 1702 sent a series of written requests for information pertaining to the use of contractors at Respondent Monongalia's Kuhntown mine. Generally, the requests sought a description of all work performed by contractors, the number of contractors hired, and copies of contractor invoices over various time periods. The first request stated as follows:

> Request For Information
>
> By Local Union
>
> To Whom It May Concern, this is a request for information by the Local Union for the purpose of determining the need to file a grievance and/or todetermine if one has merit. We request this information be provided on or before 7 days from today. Failure to provide this information will cause a delay in the grievance procedure, as well as possible Labor Charges.
>
> Date: 1/23/18

[1] The parties stipulated that District 31 administers the collective-bargaining agreement on behalf of UMWA.

[2] All further dates are in 2018 unless otherwise noted.

> Grievance: contract enforcement
>
> Information Requested: All invoice [sic] for contractors number of contractors and all work performed by contractors from 1/1/18 to present.
>
> > Signature of Union Rep. Jeff Reel
> > Date 1/23/18
> >
> > Delivered to: Jim Travelstead
> > Date 1/23/18

In each subsequent request, Local 1702 extended the time period covered by the request through the date of the current request.

On January 29, Respondent Monongalia's attorney, Cory Barack, responded with a request that Local 1702 explain the relevance of the requested information as it related to the stated purpose of "determining the need to file a grievance and/or to determine if one has merit." Local 1702 emailed its second and third information requests on January 29 and 31, respectively. On January 31, Barack again requested that Local 1702 explain the relevance of the requested information.

On February 2, the Vice President of Local 1702, Jeff Reel, emailed Barack explaining that "[t]he requested information provides the Union with the information needed to determine if Management has violated any of the provisions of this Article. If the requested information shows that a contractor was used to perform work which doesn't meet any of the exemptions in Article 1, we may file a grievance to uphold the Contract."

On February 6, Local 1702 emailed its fourth information request. On February 9, Barack emailed Reel and said that Respondent Monongalia was "compiling the requested information and [would] respond more fully once complete." On February 12, Local 1702 emailed its fifth and sixth information requests.

On February 14, Barack emailed Reel asserting that Respondent Monongalia had been attempting to engage Local 1702 in a "dialogue concerning repeated, vague, nonspecific and burdensome requests for information relating to the general subject matter of contracting out." Barack contended that the requests were nonspecific because they did not relate to a particular instance of unit work being contracted out and, as such, they constituted blanket requests for any and all contracting information. Barack stated that if Local 1702 was not willing to narrow its information requests, Respondent Monongalia "would consider" responding if Local 1702 would bear the cost of assembling the responses, including hourly pay for the employees compiling the response and the cost of copies.

On February 15, Reel responded, stating that Respondent Monongalia had made little to no effort to engage with Local 1702 on the issue, and repeating that the information was necessary to ensure that unit work was not being contracted out in violation of the collective-bargaining agreement. In addition, Reel maintained that the requests were not burdensome because the information was in Respondent Monongalia's possession and thus easily obtainable. The February 15 email also included Local 1702's seventh information request.

On February 19, Local 1702 emailed its eighth information request. Barack responded on February 20, stating that Local 1702 had failed to address the issue of whether it would bear the cost of assembling the responsive information. Reel replied the same day, asking "that the Company identify any particular request they consider burdensome, what part of the request is burdensome and why, and [supply] an itemized estimate of the costs of furnishing the information."

On March 12, Barack sent a letter to District 31 in which he asserted that the Respondents had responded to the requests for information concerning contractors at the Kuhntown and Mannington mines with requests for clarification or, in the alternative, offers to respond if the Unions bore the cost of assembling the responsive information. Respondent Monongalia calculated that the cost of producing the requested information for January and February amounted to $285.95 in employee time and $13.32 in copies. Barack stated that if the Unions would reimburse those costs, Respondent Monongalia was "ready to produce the requested documents." Further, Barack suggested that the parties prepare to negotiate a "cost reimbursement agreement that will apply to all such blanket-requests for contracting out information." On March 16, the Unions declined to bargain over cost sharing, rejected Respondent Monongalia's claim that $299.27 in costs to respond to the requests constituted an undue burden, and argued that the Unions were entitled to the information under the law.

On April 4, District 31 Representative Michael Phillippi emailed Barack identifying multiple open grievances related to the use of contractors in violation of the collective-bargaining agreement at both Respondent Harrison's Mannington mine and Respondent Monongalia's Kuhntown mine. Phillippi further stated that the information requested between January and March was relevant to investigating and pursuing these specific grievances. On April 6, Barack responded that open grievances did not obligate the Respondents to respond to blanket, nonspecific information requests pertaining to contracting. He also said stated that the only reason the Unions had not received the requested information, including information pertinent to open grievances, was because the Unions "refused to bargain over cost sharing." On May

31, Respondent Harrison provided information related to one of the open grievances referenced in Phillippi's email on May 31, a few days before that grievance went before an arbitrator.

B. Parties' Contentions

The General Counsel contends that Respondent Monongalia violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish Local 1702 with relevant requested information and that Respondent Harrison violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing District 31 with the information it requested on April 4. The Charging Parties and the General Counsel argue that the relevance of the requested information should have been apparent to the Respondents in light of the parties' ongoing disputes over contracting. In support, the Charging Parties and General Counsel cite to *Murray American Energy, Inc. and Monongalia County Coal Co.*, 366 NLRB No. 80 (2018) (*Murray I*), enfd. mem. 765 Fed.Appx. 443 (D.C. Cir. 2019), an earlier case in which the Board found, among other things, that Respondent Monongalia violated the Act by failing and refusing to provide requested information pertaining to the use of contractors.[3] But even if the relevance of the requested information was not apparent at the time of the initial written request, the General Counsel argues that the Unions explained its relevance to the Respondents by stating that the information was being requested to monitor compliance with Article 1 of the NBCWA and to determine whether to file a grievance. The General Counsel and Charging Parties further argue that Respondent Monongalia failed to demonstrate that a cost of approximately $300 to respond to Local 1702's information requests was unduly burdensome and that, therefore, Local 1702 did not have an obligation to bargain over cost sharing. With respect to the requested information pertaining to specific grievances, although the General Counsel acknowledges that those grievances are no longer pending, he relies upon Board cases that have held that the right of a union to requested information is determined based on the circumstances at the time the request was made. Lastly, the Charging Parties argue that the requested information was easily obtainable and that Respondent Harrison did not make a reasonable, good-faith effort to respond promptly, citing its 2-month delay in providing the information pertaining to one grievance.

The Respondents contend that the requested information was not relevant because the requests sought information concerning all contracting work, not just contracting that could have affected bargaining unit work, and the Unions refused to narrow the scope of the information requests. Further, the Respondents argue that the information requests were unduly burdensome and that the Unions failed to bargain over accommodations or cost sharing. The Respondents also argue that they were under no obligation to respond to the requests for information because the requests were made in bad faith to harass the Respondents. Lastly, the Respondents contend that the relevance of requested information should be determined based on a "proportionality standard," as opposed to determining relevance based on whether the requested information is reasonably calculated to lead to the discovery of admissible evidence.

C. Discussion

The Board decided a dispute substantively identical to this one in *Murray I*. In the previous case, UMWA requested copies of invoices, bids, or other documents concerning the nature, extent, cost, and duration of work being performed by contractors at the Kuhntown mine over a 9-month period. In finding that Respondent Monongalia violated the Act by failing and refusing to provide the requested information, the Board adopted the administrative law judge's determination that the information was relevant and his rejection of Respondent Monongalia's argument that the requests were unduly burdensome. 366 NLRB No. 80, slip op. at 29–30. The judge in *Murray I* also rejected the contention that the volume of information requests—50 requests between December 2015 and May 2016—demonstrated bad faith. Id., slip op. at 30–31. The Respondents advance no argument that would support different findings here. This case involves one of the same parties, the same collective-bargaining agreement (NBCWA), and an almost identical dispute over requested information pertaining to the use of contractors.

1. Information Related to the Use of Contractors at the Kuhntown Mine

In *NLRB v. Acme Industrial Co.*, the Supreme Court stated that "[t]here can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties," including deciding whether to process a grievance. 385 U.S. 432, 435–436 (1967). Generally, information concerning wages, hours, and other terms and conditions of employment of unit employees is presumptively relevant to the union's role as exclusive

[3] We grant the General Counsel's request to take administrative notice of this case. See *Advertisers Mfg. Co.*, 275 NLRB 100, 102 (1985) ("It has long been established that the Board will take official notice of its own proceedings and decisions [and] that it may rely thereon . . ."); *Union de Tronquistas (Hotel La Concha)*, 193 NLRB 591, 598 (1971) (taking notice of other Board cases involving the same respondent).

collective-bargaining representative. See, e.g., *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). In contrast, information concerning matters outside the bargaining unit is not presumptively relevant; rather, the burden is on the union to demonstrate the relevance of the requested information. Id. However, the Board has adopted a liberal, discovery-type standard for information requests,[4] and the burden of proving the relevance of nonunit information is not exceptionally heavy.[5] As the Board has recognized, "[p]otential or probable relevance is sufficient to give rise to an employer's obligation to provide information." *Disneyland Park*, 350 NLRB 1256, 1258 (2007).[6] Although the relevance of nonunit information must be demonstrated, "the ultimate standard of relevancy is the same in all cases." *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 84 (2d Cir. 1969), cert. denied 396 U.S. 928 (1969).

Here, just as in *Murray I*, Local 1702 requested information concerning the "nature, extent, cost, and duration of work being performed by non-employee contractors" at Respondent Monongalia's Kuhntown mine. 366 NLRB No. 80, slip op. at 29. Because Local 1702's requests seek nonunit information, the relevance of the requested information is not presumed but must be shown. *Disneyland Park*, 350 NLRB at 1258. To make this showing, "the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances." Id. (footnote omitted).

As mentioned above, subcontracting has long been a subject of disagreement between the parties, as can be demonstrated by the numerous similar information requests and grievances described in *Murray I*. Furthermore, disputes regarding the use of contractors at the mines continued to be a regular occurrence at the time of the written requests at issue, as demonstrated by the list of grievances in Phillippi's April 4 email. Given this background, the Respondent should have been well aware of the relevance of the information requested by Local 1702. Furthermore, Local 1702 clearly and repeatedly identified the relevance of the requested information. For example, in his January 23 email, Reel noted that the information was being requested for "contract enforcement" and investigation of potential grievances. On February 2, Reel further clarified that the requests were for contractor information affecting bargaining unit work, stating that the information was being requested to determine if a "contractor was used to perform work which doesn't meet any of the exemptions in Article 1." Under these circumstances, we find that Local 1702 satisfied its burden to demonstrate that the requested information was relevant to assess Respondent Monongalia's compliance with the subcontracting provisions of Article IA. See *Postal Service*, 364 NLRB No. 27, slip op. at 18 (2016) ("Information requested to enable a union to assess whether a respondent has violated a collective-bargaining agreement by contracting out unit work and, accordingly, to assist a union in deciding whether to resort to the contractual grievance procedure, is relevant to a union's representative status and responsibilities.").

Where requested information is found relevant but the employer claims that furnishing it would impose an undue burden, "the onus is on the employer to show that production of the data would be unduly burdensome." *Mission Foods*, 345 NLRB 788, 789 (2005) (citing cases).[7] In

[4] See, e.g., *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994).

[5] See, e.g., *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

[6] Again, the Respondents ask us to modify the long-established standard for determining whether a party has an obligation to provide requested information by adding a "proportionality" requirement. The Respondents provide no argument why the Board should adopt this standard other than the fact that Federal Rule of Civil Procedure 26(b) was amended 5 years ago to include such a standard for discovery requests propounded in civil litigation. We find this analogy unpersuasive. Civil litigants seek discovery for the purpose of litigating disputes regarding private rights. The provision of relevant requested information to a labor organization, on the other hand, furthers the national labor policy of eliminating "obstructions to the free flow of commerce," 29 U.S.C. §151, by enabling a union to fulfill its duties as bargaining representative, including enforcing collective-bargaining agreements, ascertaining whether to file grievances, and processing such grievances once it has decided they are warranted. In addition, when complaint issues alleging that an employer has unlawfully failed to furnish requested information necessary for, and relevant to, a union's performance of its duties as bargaining representative, the Board's role in resolving that dispute is not the same as a court's role in adjudicating a discovery dispute between private parties. See generally *NLRB v. Acme Industrial Co.*, 385 U.S. at 436 ("[I]n assessing the Board's power to deal with unfair labor practices, provisions of the Labor Act which do not apply to the power of the courts under § 301 must be considered."); *Amalgamated Utility Workers v. NLRB*, 309 U.S. 261, 265 (1940) ("The Board as a public agency acting in the public interest, not any private person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce."). Accordingly, we decline the Respondents' request to modify the standard applicable to information-request disputes based on the wording of Federal Rule of Civil Procedure 26(b).

[7] In *Food Employer Council, Inc.*, 197 NLRB 651, 651 (1972), cited by the Respondents, the Board held that "[i]f there are substantial costs involved in compiling the information in the precise form and at the intervals requested by the Union, the parties must bargain in good faith as to who shall bear such costs, and, if no agreement can be reached, the Union is entitled in any event to access to records from which it can reasonably compile the information." Here, however, the Union did not request that the subcontracting information be provided in any specific form, nor have the Respondents established that compiling the requested information would entail "substantial costs."

support of their claim that Local 1702's requests for information were overbroad and unduly burdensome, the Respondents cite the repeated nature of the requests and assert that the Unions were obligated to bargain over cost sharing. Respondent Monongalia first claimed that producing the requested information would be burdensome on February 14, but it did not provide information regarding the cost of producing the information until March 12, when it said that the cost for January and February would be $299.27.[8] We find that this amount does not impose an undue financial burden on Respondent Monongalia. Accordingly, because Respondent Monongalia failed to show the information requests were unduly burdensome, Local 1702 was under no obligation to engage in bargaining over cost sharing.

Similarly, we reject Respondent Monongalia's claim that it had no obligation to respond to Local 1702's requests for information because they were made in bad faith. As evidence, Respondent Monongalia again points to Local 1702's failure to bargain over cost sharing and the repeated nature of the requests. We have rejected Respondent Monongalia's argument regarding cost-sharing negotiations. Regarding the repeated-requests argument, Local 1702 submitted eight requests covering Respondent Monongalia's use of contractors over a 2-month period. The number of requests and span of time covered by them does not show bad faith but rather diligent execution of Local 1702's representative duties in light of ongoing disputes involving the use of contractors to perform bargaining unit work. Successive requests merely extended the ending date of the time period covered by the request to obtain up-to-date information. "[T]he presumption is that the union acts in good faith when it requests information from an employer until the contrary is shown." *International Paper Co.*, 319 NLRB 1253, 1266 (1995) (internal quotation marks omitted), enf. denied on other grounds 115 F.3d 1045 (D.C. Cir. 1997). Respondent Monongalia has not overcome this presumption here. See *Murray I*, 366 NLRB No. 80, slip op. at 30–31 (rejecting Respondent Monongalia's claim of bad faith where union tendered 50 information requests between December 2015 and May 2016).

Accordingly, we find that Respondent Monongalia violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide Local 1702 with the requested information.

[8] Before March 12, the Respondents did not even offer to bargain over cost sharing but rather demanded that the Unions pay all costs before they would "consider" responding to the requests.

2. Information Related to Grievance #1702-31-18

Where information is requested in connection with a grievance, the Board's test for relevance remains a liberal one. In *NLRB v. Acme Industrial Co.*, 385 U.S. at 437, the Supreme Court endorsed the Board's view that a liberal, "discovery-type standard" applies to union information requests related to the evaluation of grievances. Generally, the goal of the process of exchanging such information is "to encourage resolution of disputes, short of arbitration hearings, briefs, and decision so that the arbitration system is not 'woefully overburdened.'" *Pennsylvania Power Co.,* 301 NLRB 1104, 1105 (1991) (quoting *Acme Industrial*, 385 U.S. at 438). The Board's liberal relevancy standard furthers this goal.

On April 4, the Unions requested "all invoices for contractors, the number of contractors and all work performed by contractors" relevant to numerous grievances filed at both the Kuhntown mine and the Mannington mine. Based on the parties' joint stipulation, at issue here is grievance #1702-31-18, which alleged that "contractors perform[ed] classified work" on specific dates at Respondent Monongalia's Kuhntown mine. Although this information is not presumptively relevant, we find that Local 1702 established that the requested information was relevant to, and necessary for, evaluating the merits of the pending grievance, including determining the nature and scope of Respondent Monongalia's alleged violations of Article 1A of the collective-bargaining agreement. See *Schrock Cabinet Co.,* 339 NLRB 182, 182 fn. 6 (2003) (finding that union established relevance of requested information regarding subcontracting of specified work by advising employer that it was requesting the information to evaluate potential grievances). Accordingly, we find that Respondent Monongalia violated Section 8(a)(5) and (1) of the Act by refusing to furnish Local 1702 with the information requested on April 4 in connection with the specified grievance.

3. Unreasonable Delay in Providing Information Related to Grievance #PP-4–18

The duty to furnish information requires a reasonable, good-faith effort to respond to the request as promptly as circumstances allow. See *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "An unreasonable delay in furnishing [relevant requested] information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Monmouth Care Center*, 354 NLRB 11, 41 (2009) (citations omitted), reaffirmed

and incorporated by reference 356 NLRB 152 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012).

As noted above, on April 4, the Unions requested "all invoices for contractors, the number of contractors and all work performed by contractors" relevant to grievances filed at both the Kuhntown mine and the Mannington mine. At issue here is grievance #PP-4-18, which asserted that "contractors perform[ed] classified work" on a specific date at Respondent Harrison's Mannington mine.[9] Respondent Harrison furnished District 31 with the information relevant to grievance #PP-4–18 on May 31, several days before the grievance proceeded to arbitration.[10] As with the information related to grievance #1702-31-18, we find that District 31 demonstrated the relevance of the requested information. Thus, Respondent Harrison was obligated to timely provide the information absent a valid defense. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). We have rejected the Respondents asserted defenses that the Unions' requests were unduly burdensome or made in bad faith, and at no point during the nearly 2-month interval between the date of the request and the date the information was provided did Respondent Harrison assert that it was difficult to retrieve the requested information or otherwise communicate a valid reason for the delay. See *Linwood Care Center*, 367 NLRB No. 14, slip op. at 4–5 (2018) (finding 6-week delay in providing requested information unreasonable where information was not difficult to retrieve and respondent provided no justification for the delay). Accordingly, we find that Respondent Harrison violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in providing District 31 with the information requested on April 4 in connection with the specified grievance.

CONCLUSION OF LAW

By failing and refusing to furnish Local 1702 with relevant and necessary requested information, Respondent Monongalia violated Section 8(a)(5) and (1) of the Act. By unreasonably delaying in providing District 31 with relevant and necessary information, Respondent Harrison violated Section 8(a)(5) and (1) of the Act. By this conduct, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that Respondent Monongalia unlawfully failed and refused to provide Local 1702 with relevant information requested on eight dates between January 23 and February 19, 2018, we shall order Respondent Monongalia to provide the information requested by Local 1702.[11]

ORDER

A. The National Labor Relations Board orders that Murray American Energy, Inc. and the Harrison County Coal Company, a single employer (Respondent Harrison), St. Clairsville, Ohio, and Mannington, West Virginia, respectively, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the United Mine Workers of America, AFL–CIO, CLC (UMWA) by unreasonably delaying in furnishing it with requested information that is relevant and necessary to UMWA's performance of its functions as the collective-bargaining representative of Respondent Harrison's unit employees.

(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 policies of the Act.

(a) Post at its facility in Mannington, West Virginia, copies of the attached notice marked "Appendix A."[12] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by Respondent Harrison's authorized representative, shall be posted by

[9] The Unions also requested information relevant to grievance #PP-5-18, but the allegation of unlawful delay concerns only the information pertinent to grievance #PP-4-18.

[10] A no-merit decision was issued by the arbitrator in grievance #PP-4-18 on November 20, 2018. Following that decision, grievance #PP-5-18 was withdrawn.

[11] Although Respondent Monongalia failed and refused to provide information requested on April 4, 2018, pertaining to grievance #1702-31-18, the parties stipulated that the grievance was ultimately settled. Accordingly, we shall not order Respondent Monongalia to furnish the requested information pertaining to that grievance. See *Westinghouse Electric Corp.*, 304 NLRB 703, 703 fn. 1, 709 (1991) (no affirmative order to produce requested information in light of judge's finding that only demonstrated relevance of information was to a concluded arbitration that the arbitrator was without authority to reopen).

[12] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent Harrison customarily communicates with its employees by electronic means. 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."

Respondent Harrison and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent Harrison customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent Harrison to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent Harrison has gone out of business or closed its Mannington, West Virginia facility, Respondent Harrison shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Harrison at the closed facility at any time since April 4, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Harrison has taken to comply.

B. The National Labor Relations Board orders that Murray American Energy, Inc. and the Monongalia County Coal Company, a single employer (Respondent Monongalia), St. Clairsville, Ohio, and Kuhntown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the United Mine Workers of America, District 31, Local 1702, AFL–CIO, CLC (Local 1702) by failing and refusing to furnish it with requested information that is relevant and necessary to Local 1702's performance of its function as the collective-bargaining representative of Respondent Monongalia's unit employees.

(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 policies of the Act.

(a) Furnish to Local 1702 in a timely manner the information requested between January 23, 2018, and February 19, 2018, concerning the use of contractors at the Kuhntown, Pennsylvania facility.

(b) Post at its facility in Kuhntown, Pennsylvania, copies of the attached notice marked "Appendix B."[13] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by Respondent Monongalia's authorized representative, shall be posted by Respondent Monongalia and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent Monongalia customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent Monongalia to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent Monongalia has gone out of business or closed its Kuhntown, Pennsylvania facility, Respondent Monongalia shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Monongalia at the closed facility at any time since January 23, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 6 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Monongalia has taken to comply.

Dated, Washington, D.C. December 15, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[13] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent Monongalia customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the United Mine Workers of America, District 31, AFL-CIO, CLC (the Union) by unreasonably delaying in furnishing the Union with requested information that is relevant and necessary to the Union's performance of its function as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

MURRAY AMERICAN ENERGY, INC. AND
HARRISON COUNTY COAL COMPANY

The Board's decision can be found at www.nlrb.gov/case/06-CA-215195 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the United Mine Workers of America, District 31, Local 1702 AFL–CIO, CLC (the Union), by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its function as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested between January 23 and February 19, 2018, concerning the use of contractors at the Kuhntown, Pennsylvania facility.

MURRAY AMERICAN ENERGY, INC. AND
MONONGALIA COUNTY COAL COMPANY

The Board's decision can be found at www.nlrb.gov/case/06-CA-215195 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.