CenturyTel of Montana, Inc., a subsidiary of Lumen Technologies, Inc. f/k/a CenturyLink, Inc. *and* International Brotherhood of Electrical Workers, Local 768. Case 19–CA–283839

October 10, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND PROUTY

On December 6, 2022, Administrative Law Judge Mara-Louise Anzalone issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

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

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

We affirm the judge's findings and conclusions, as clarified below, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information requested by Charging Party International Brotherhood of Electrical Workers (IBEW), Local 768 (the Union). The requested information pertained to whether National Lumen Technicians (National Technicians), who are outside the bargaining unit, had been performing unit work within the Union's jurisdiction in Northwest Montana. Contrary to the arguments of the Respondent and our dissenting colleague, we agree with the judge that the Union demonstrated that the requested nonunit information was relevant to the Union's performance of its statutory duties at the time of the request. We also agree with the judge that the relevance of this information should have been apparent to the Respondent and, in any event, the relevance was established at the unfair labor practice hearing.

I. BACKGROUND

The Respondent is a national telecommunications provider with a presence in several states, including Montana. During the events at issue, the Respondent and the Union were parties to a collective-bargaining agreement covering a unit of technicians in the northwestern part of Montana who perform a range of maintenance, installation, and repair work on the Respondent's telecommunications equipment. The facts, as more fully described by the judge, center on a request for information emailed by the Union's business manager, George Bland, to the Respondent on August 10, 2021.[3] In that email, Bland explained that the requested information pertained to nonunit National Technicians "working in [the Union's] jurisdiction." The Union requested the information based on a belief that National Technicians, who are outside the bargaining unit, might have been performing bargaining unit work in breach of the contract. Bland's request included the following items:[4]

> 1. How many National Lumen Technicians are currently working in [the Union's] jurisdiction? Please provide the exact number of technicians.
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> . . .
>
> 2. How long have the National Lumen Technicians been working within [the Union's] jurisdiction? Please provide the starting date.
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> . . .
>
> 5. Please provide the names of any and all Lumen customers in [the Union's] jurisdiction that these National Lumen Technicians have performed work for.
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> 6. Which Managers and Director(s) do these National Lumen Technicians report to? Please provide the names and titles of all.
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> 7. What Company department or entity dispatches the National Lumen Technicians? How do they receive their work orders?
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> 8. How do the National Lumen Technicians close out their work orders?
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> 9. Which Company systems, information and databases do the National Lumen Technicians have access to?
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> 10. Which Company departments and personnel do the National Lumen Technicians interact with? Please list any and all.
>
> 11. What Company location(s) [within the Union's jurisdiction] do the National Lumen Technicians physically report to?

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

[2] We shall amend the judge's conclusions of law to conform to the violation found. We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decision in *Paragon Systems, Inc.*, 371 NLRB No. 104 (2022). We shall also substitute a new notice to conform to the Order as modified.

[3] All subsequent dates are in 2021 unless otherwise specified.

[4] Bland's request included several other items that fall outside the scope of the General Counsel's complaint.

> 12. What Company location(s) in [the Union's] jurisdiction do the National Lumen Technicians have direct access to?
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> 13. Which Company buildings [within the Union's jurisdiction] do these National Lumen Technicians have direct access to?
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> 14. Which Company buildings [within the Union's jurisdiction] have these National Technicians performed work in?
>
> . . .
>
> 17. Please provide the most current job [description] for [National] Technicians.
>
> . . .

It is undisputed that the Union's August 10 request was predicated on some background events that the Respondent first learned about at the unfair labor practice hearing. First, the Union is a member of an internal IBEW group known as the Telecommunications Council (TCC). The TCC is a council made up of IBEW locals that represent bargaining units of the Respondent's employees nationwide. On July 27, several weeks prior to submitting the aforementioned information request, Bland received an email from TCC's chairman notifying the locals of a concern that the Respondent was using National Technicians to perform unit work. Around this time, representatives from locals in Missouri and Texas confirmed that this was happening in their jurisdictions. On August 9, the day before Bland submitted his request, TCC's leadership circulated a sample request form and encouraged all the locals to modify it and submit it to their respective managers to obtain more information. It is additionally undisputed that in 2018 the Union and the Respondent's predecessor company, CenturyLink, resolved two grievances regarding unilateral subcontracting of work and the use of nonunit employees to perform bargaining unit work in the Union's jurisdiction.

Bland emailed the August 10 request to the Respondent's manager of region operations, John Bemis. As noted above, Bland's email specifically explained that the information request regarded whether "National Techs [were] working in [the Union's] jurisdiction." Upon receiving the information request, Bemis became curious whether the Union was claiming a breach of the collective-bargaining agreement, and he called Bland to inquire. During that call, Bland asked Bemis if there were any National Technicians doing work "in my jurisdiction," and Bemis responded affirmatively, stating that "they had been in my [i.e., the Union's] jurisdiction a few times but not very many."[5]

Later that day, Bemis replied to Bland via email, notifying him that he was passing the Union's information request on to Manager Arnell Anderson for processing. On August 25, Bland resubmitted the same request to Bemis and Anderson. Anderson answered about an hour later, indicating that a member of the Respondent's Labor and Employee Relations team was working on a response and would be in touch as soon as possible.

On September 1, the Respondent's senior human resources advisor, Keller Noble, responded to Bland, and wrote that she was in the process of gathering the requested job descriptions (item #17 of the request). In response to some of the Union's questions, Noble wrote that there are two National Technicians working in Montana and provided a summary of their responsibilities. Noble also specified that there was no work being performed by National Technicians that fell under the Union's jurisdiction. With respect to the remainder of Bland's request, Noble included the following recitation for each item: "[w]hy is this information relevant to administering your Collective Bargaining Agreement when these Lumen employees are not represented by [the Union] and are not performing bargaining unit work?"

On September 13, Bland replied to Noble's email and asked if Noble had made any progress retrieving the job descriptions. Bland also attached an explanation for why the Union needed each of the items enumerated in the request:

> [w]hile we appreciate the Company's assertion that these National Technicians are not performing bargaining unit work, the Union has the right to make an *independent* determination on whether or not these National Technicians are performing bargaining unit work or have performed bargaining unit work previously. The number of National Technicians working in our jurisdiction would assist the Union in making that determination.

For every document sought, Bland reiterated that each piece of evidence would help the Union conduct an independent investigation into whether bargaining unit work was being diverted. Later that day, Noble responded to Bland's email and provided a job description for the "Combo Tech" position. She apologized for the delay and wrote that she was in touch with the Respondent's recruiting office to obtain the rest of the position descriptions.

On September 22, Noble followed up and emailed Bland several additional job descriptions, specifically the "CST," "Net Tech" (also referred to as a "Central Office Technician") and "Technician II." She once again apologized, noting that she was still "struggling with recruiting to get the correct descriptions." Some of the pages in

[5] Tr. at 52 (testimony of Bland). The judge credited Bland's testimony over Bemis' testimony regarding what was said during this phone conversation. However, the judge credited Bemis' testimony that this phone conversation occurred *after* Bemis received the information request, not before.

Noble's attachment were untitled and it was unclear which positions the documents pertained to. It is undisputed that Noble did not explicitly provide Bland with the descriptions of the National Technician positions he was seeking. Bland responded later that day, thanking Noble for the additional descriptions, and asking when he could expect a reply to the other requested information.

On September 23, Noble replied, referring back to her September 1 email regarding the scope of work being performed by National Technicians. About an hour later, Bland emailed her again, asking her to provide answers to all his questions no later than close of business that day, and noting that failure to provide the information would lead to the filing of an unfair labor practice charge. He emphasized that "the Union has a right to make an [i]ndependent determination on whether or not National Technicians are performing bargaining unit work or have performed bargaining unit work in our jurisdiction." Within a few minutes, Noble answered, writing that Bland's request regarding the National Technicians fell "outside the scope of [the Union's] jurisdiction as outlined in the collective bargaining agreement." Later that afternoon, Bland sent Noble a final reply:

> We have explained, in detail, relevance of the information requested and answered all of the Company's questions regarding this matter. You are now denying the information based on the fact that [the Union] does not represent these National Technicians. That may be correct, however, if these National Technicians, who (as you point out) are non-bargaining unit members . . . performing the work of employees who are covered by the CBA, then certainly such [a] request is not outside the scope of jurisdiction[.] As stated in my letter, [the Union] has every right to make [an] independent determination regarding this matter. Please provide all the requested information no later than September 29th, 2021. Thank you.

The Respondent did not communicate any further with the Union about the information request.

II. DISCUSSION

The duty to bargain collectively specified in Section 8(a)(5) of the Act includes a duty to supply a union, upon request, with information that will enable the union to perform its duties as the bargaining representative of unit employees. *Permanente Medical Group, Inc.*, 372 NLRB No. 51, slip op. at 6 (2023) (citing *New York & Presbyterian Hospital v. NLRB*, 649 F.3d 723, 729 (D.C. Cir. 2011)); see also *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Where, as here, requested information does not pertain to unit employees, it is not presumptively relevant, and its relevance must be established. To demonstrate relevance of nonunit information, the General Counsel must show that either: (1) the union demonstrated the relevance of the nonunit information; or (2) the relevance of the information should have been apparent to the employer under the circumstances. *Disneyland Park*, 350 NLRB 1256, 1258 (2007) (citing *Allison Co*., 330 NLRB 1363, 1367 fn. 23 (2000)); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018–1019 (1979), enfd. in relevant part 615 F.2d 1100 (5th Cir. 1980). The Union cannot simply rely on generalized conclusory explanations, hypothetical theories, or "mere suspicion." *Disneyland Park*, 350 NLRB at 1258 fn. 5; *Sheraton Hartford Hotel*, 289 NLRB 463, 463–464 (1985). The burden of establishing relevance for nonunit information, however, is not "an exceptionally heavy one." *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011). Rather, the Board uses a "liberal discovery-type standard." *Acme Industrial Co.*, supra, 385 U.S. at 437 & fn. 6. Thus, under this standard, 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. at 437; see also *United States Testing Co.*, 324 NLRB 854, 859 (1997), enfd. 160 F.3d 14 (D.C. Cir. 1998); *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Additionally, under longstanding Board precedent, a union is not obligated to disclose to the employer the facts supporting its claim of relevance at the time the information is requested. See, e.g., *Cannelton Industries*, 339 NLRB 996, 997 (2003); *Brazos Electric Power*, 241 NLRB at 1018–1019. "Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief." *Cannelton Industries*, 339 NLRB at 997 (citing *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988)).

We agree with the judge that the Union established and demonstrated to the Respondent the relevance of the requested information about the National Technicians on August 10, upon making its information request. As noted above, shortly after the Union requested information about National Technicians working in the Union's jurisdiction, Manager Bemis called Union Representative Bland to discuss what had prompted the request. The judge credited Bland's version of the substance of the conversation. As described above, Bland asked Manager Bemis whether any National Technicians had been working in the Union's jurisdiction, and Bemis responded that they had "a few times but not very many." We find that Bemis's contemporaneous admission that National Technicians had worked in the Union's jurisdiction established the relevance of the requested information on August 10. Of course, Manager Bemis was aware of his own admission and that the Union sought the information to protect unit work from diversion. We are unpersuaded by the attempts of the Respondent and our dissenting colleague to minimize the significance of Bemis's August 10 call with Bland in establishing the relevance of the requested information. We see no reason to disturb the judge's well-reasoned credibility determinations. And the Union can

hardly be faulted for its assiduousness in pursuing the request for information regarding exactly what work the National Technicians performed when Bemis admitted that they had been working in the Union's area. These grounds are independently sufficient to establish that the requested information was relevant to the Union's performance of its statutory duties.

In any event, we similarly agree with the judge that the relevance of the requested information should have been apparent to the Respondent on August 10. Bemis, a senior management official, took the initiative to call Bland to inquire about the request shortly after receiving it. The Respondent, by virtue of Bemis's conversation with Bland, was put on notice that the Union was seeking information regarding a possible diversion of unit work and that the Union had been told by the Respondent that National Technicians had worked in the Union's jurisdiction. Accordingly, the relevance of the requested information should have been readily apparent to the Respondent under the circumstances on August 10.

Independent of the foregoing grounds, we find that the relevance of the request was, in any event, demonstrated at the unfair labor practice hearing. During the hearing, the General Counsel presented evidence not only of the phone conversation but also of the TCC's reports to the Union that the Respondent had diverted unit work to National Technicians in other bargaining units around the country as well as evidence of prior grievances, filed in 2018, against the Respondent's predecessor for diversion of unit work in Northwest Montana. This evidence further supports a finding that the requested nonunit information is relevant to the Union's duties. First, the Union reasonably relied on the TCC reports as a basis for its request. As noted above, immediately prior to submitting the request in question, the Union received credible reports of National Technicians performing unit work in other parts of the country. It is true that these incidents occurred outside of the Union's jurisdiction. But the fact that unit work, of the same type, was being diverted to National Technicians in Missouri and Texas, and the fact that Respondent was utilizing National Technicians within the geographic scope of the bargaining unit (as Bemis admitted on August 10), established reasonable cause to believe that diversion of unit work might be occurring here.

We similarly agree with the judge that the Union's prior grievances over diversion of unit work provided an additional basis for the request. Though the grievances were filed several years before the events in question and involved the Respondent's predecessor, they resolved allegations of unilateral subcontracting of work and the use of nonunit employees to perform bargaining unit work in Northwest Montana. Viewed in conjunction, the TCC reports and the prior grievances all make clear that the Union's request was not based on "mere suspicion." Indeed, an employer's obligation to provide information regarding a potential transfer of work "is not such as to establish that, in fact, there was unlawful diversion of the work, but merely that the Union 'had a reasonable belief that enough facts existed to give rise to a reasonable belief that' there was an unlawful diversion of work away from unit employees." *Bentley-Jost Electric Corp.*, 283 NLRB 564, 568 (1987) (internal citations omitted). Such a reasonable belief existed here.

Our dissenting colleague would disregard the TCC reports and the Union's prior grievances of diversion of unit work in Northwest Montana when analyzing relevance because the record fails to establish that the Respondent knew of the reports or the grievances when the Union made its information request. Our dissenting colleague acknowledges that his approach would require overruling longstanding Board precedent holding that a union is not obligated to disclose the factual basis for its information request at the time of the request and that "it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief." *Cannelton Industries*, supra, 339 NLRB at 997 (cited in *Piggly Wiggly Midwest LLC*, 357 NLRB 2344, 2344 (2012)). Rejecting that precedent, our dissenting colleague would adopt the standard articulated by the Third Circuit in *Hertz Corp. v. NLRB*, 105 F.3d 868 (3d Cir. 1997). Under that standard, a union must "do more than state the reason and/or authority for its request for information," it must "apprise [an employer] of *facts* tending to support" its request for nonunit information. Id. at 874.[6]

Unlike our dissenting colleague, we see no valid reason for revisiting our longstanding precedent in this area in this proceeding. As an initial matter, the Respondent has not urged us to overrule Board law or to adopt the Third Circuit's *Hertz* approach. In addition, the Board has consistently applied its longstanding rule that relevance can be shown at the unfair labor practice hearing both before *and after* the Third Circuit's decision in *Hertz*.[7] Consequently, we decline our dissenting colleague's suggestion to sua sponte reconsider and overrule Board precedent.

Moreover, the result in this case would not change even if we were to apply the Third Circuit's *Hertz* standard. Under the *Hertz* approach, where the factual basis of a request for nonunit information is obvious from all the

[6] Our dissenting colleague does not pass on whether the Union established the relevance of the requested information at the hearing. Instead, the dissent asserts that "assuming it was sufficient, and assuming the Union renewed its information request, the Respondent would then act at its own peril if it failed to respond."

[7] See, e.g., *Hilton Hotel Employer LLC d/b/a Hilton Hawaiian Village Waikiki Beach Resort,* 372 NLRB No. 61, slip op. at 4 and fn. 6 (2023); *Diamond Trucking, Inc.*, 365 NLRB 646, 647–648 fn. 8 (2017); *Piggly Wiggly Midwest LLC*, 357 NLRB at 2344–2345; *McCarthy Construction Co.*, 355 NLRB 50, 51 (2010), incorporated by reference 355 NLRB 365 (2010); *H & R Industrial Services, Inc.,* 351 NLRB 1222, 1224 (2007); *Cannelton Industries*, 339 NLRB at 997; *Brazos Electric Power*, 241 NLRB at 1018–1019.

surrounding circumstances, the union's failure to articulate it will not absolve the employer of its obligations under the Act. *Hertz*, 105 F.3d at 874 ("In some situations, a union's reasons for suspecting that discrimination is occurring will be readily apparent. When it is clear that the employer should have known the reason for the union's request for information, a specific communication of the facts underlying the request may be unnecessary."). As explained above, Manager Bemis' admission during the August 10 telephone call provided the Union with an independently sufficient objective factual basis to support the relevance of the requested nonunit information. And, of course, Manager Bemis was both aware of his own statement and of the fact that the Union sought the requested information to determine whether the Respondent was diverting unit work. In short, a violation would lie even under *Hertz*.

For the foregoing reasons, we affirm the judge's findings that the Union demonstrated the relevance of the requested nonunit information and that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish that information.[8]

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 5.

"5. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish to the Union information requested in paragraphs 1, 3, 5–14 and 17 of the Union's correspondence dated August 10 and 25, September 13, 22, and 23, 2021."

ORDER

The National Labor Relations Board orders that the Respondent, CenturyTel of Montana, Inc., a subsidiary of Lumen Technologies, Inc., f/k/a CenturyLink, Inc., Kalispell, Montana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Brotherhood of Electrical Workers, Local 768 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent'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 the Union in a timely manner the information requested in paragraphs 1, 3, 5–14 and 17 of the Union's correspondence dated August 10, August 25, September 13, 22, and 23, 2021.

(b) Post at its facility in Kalispell, Montana, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. If the Respondent has gone out of business or closed the Kalispell, Montana, facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 10, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. October 10, 2024

Lauren McFerran, Chairman

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] We also agree with the judge's rejection of the Respondent's secondary argument that it furnished the requested information to the Union.

[9] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

MEMBER KAPLAN, dissenting.

My colleagues affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by failing to furnish the Union with requested information about nonunit employees for the purpose of determining whether the Respondent had diverted unit work. The majority reasons that "the Union established and demonstrated to the Respondent the relevance of the requested information," which was not presumptively relevant; that the relevance "should have been apparent to the Respondent" at the time of the Union's initial request; and "in any event, the relevance was established at the unfair labor practice hearing." My colleagues are mistaken. At the time of the initial and repeated requests, the Union did not establish relevance because it failed to inform the Respondent of the objective evidence underlying its belief that the information was relevant, nor was the relevance readily apparent. At best, the General Counsel established relevance at the hearing, but I believe that is too late. When an employer is not provided with an objective basis for a union's information request at the time it is made, it should not be a violation of the Act if the employer fails to respond. To hold otherwise is illogical, undermines the purposes of the Act, and is inconsistent with fundamental tenets of due process. Instead, I believe that the Board should adopt the standard articulated by the Third Circuit in *Hertz Corp. v. NLRB*, 105 F.3d 868 (1997). Under that standard, a union must "do more than state the reason and/or authority for its request for information." Id. at 874. It must "apprise [an employer] of *facts* tending to support" its request for nonunit information. Id. I believe that this standard appropriately addresses the concerns that I have with the Board's current standard. Because the conclusion my colleagues reach today is at odds with the analysis set forth in *Hertz*, I respectfully dissent.

I. RELEVANT FACTS

The International Brotherhood of Electrical Workers, Local 768 (the Union) is a member of the Telecommunications Council (TCC) along with other IBEW locals from around the nation. On July 27, 2021,[1] the TCC informed its member locals that it was concerned the Respondent might be using nonunit employees, whom the judge referred to as "National Lumen Technicians,"[2] to perform unit work. Representatives from two member locals, one in Missouri and the other in Texas, confirmed that they believed such diversion was occurring in their jurisdictions. On August 9, the TCC's chairman sent out a template information request and urged all member locals to modify it as needed and send it to their respective managers as soon as possible. On August 10, the Union submitted to the Respondent a list of seventeen information requests about work possibly being performed by nonunit National Lumen Technicians within the Union's geographic jurisdiction. Later that same day, the Union's business manager, George Bland, was on a phone call with the Respondent's manager, John Bemis, and Bland explained that the Union wanted this information to determine whether work was being diverted to National Lumen Technicians in violation of the collective-bargaining agreement. Bland testified that during this call, Bemis told Bland that National Lumen Technicians had been in the Union's "area" or "jurisdiction"—Bland could not recall which term Bemis used—"a few times but not many." At no point during this call did Bland tell Bemis that the Union's concerns arose because of the TCC's warnings or the reports of diversion from other locals.[3]

The Union repeated its requests on August 25, September 13 and 23, but at no point did it share with the Respondent an objective basis for its suspicions. Instead, it merely repeated to the Respondent that it was entitled to make an independent determination as to whether the National Lumen Technicians had performed unit work. The Union did not even divulge the underlying basis for its concerns about diversion after the Respondent specifically asked, "Why is this information relevant to administering your Collective Bargaining Agreement when these Lumen employees are not represented by [the Union] and are not performing bargaining unit work?"

When the Respondent failed to answer the requests, the Union filed a charge, and the General Counsel issued a complaint. The Respondent did not learn about the underlying bases for the Union's concerns regarding diversion until the hearing.

II. DISCUSSION

Unlike information concerning unit members, information concerning nonunit employees, as the Union sought here, is not presumptively relevant. See *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Under the standard articulated in *Disneyland Park*, 350 NLRB 1256, 1257 (2007), "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." To satisfy this burden, the Union must demonstrate "a reasonable belief, supported by objective evidence, that the requested information is relevant." Id. at 1258. Although relevance is not an exceptionally high threshold, a "generalized, conclusionary explanation is insufficient," *Island*

[1] All subsequent dates are in 2021.

[2] These nonunit employees were also referred to in the record as "National Technicians" and "National Techs."

[3] Despite my colleagues' implication otherwise, I do not question the judge's credibility-based findings as to what was said during this telephone conversation.

The record indicates that the Union and the Respondent's predecessor, CenturyLink, resolved several grievances in 2018 regarding either the unilateral subcontracting of bargaining unit work or the use of nonunit employees to perform bargaining unit work. However, the record does not reveal to what extent the Respondent knew about these prior grievances.

Creek Coal Co., 292 NLRB 480, 490 fn. 19 (1989), enfd. 899 F.2d 1222 (6th Cir. 1990), and the requesting party may not rely on "suspicion alone" or hypothetical theories, *G4S Secure Solutions (USA), Inc.*, 369 NLRB No. 7, slip op. at 2 (2020). To support an unfair labor practice finding, "the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances." *Disneyland*, 350 NLRB at 1258.

A The Union Did Not Demonstrate Relevance Prior to the Hearing and Relevance Was Not Readily Apparent to the Respondent

My colleagues initially conclude that the General Counsel satisfied both the first and second prongs of the *Disneyland* test. In support of this position, they find that "[t]he Respondent, by virtue of Bemis's [August 10] conversation with Bland, was put on notice that the Union was seeking information regarding a possible diversion of unit work." I disagree with my colleagues that Bland's generalized statement in support of the information request was sufficient to satisfy the *Disneyland* standard. At the time of the Union's August 10 request, the Respondent's understanding was limited to the fact that the Union had concerns that National Lumen Technicians were performing unit work and that the Union wanted this information to confirm its suspicion. The Union did not provide any explanation for the basis of this suspicion whatsoever. The Respondent had no knowledge of either the TCC's warnings or the diversion reports from two other locals, so it had absolutely no idea what would have prompted the Union to believe that any diversion was occurring. Nor is there record evidence that the Respondent knew of the Union's 2018 grievances over its predecessor's decision to subcontract unit work and/or assign unit work to nonunit employees.[4]

My colleagues also give great weight to Bemis's statement during the August 10 phone call that National Lumen Technicians had been in the Union's area or jurisdiction a few times. But I fail to see how such a limited reply, which did not specifically reference diversion, could establish the relevance of the information request at issue. Contrary to my colleagues' assertion, Bemis's response was not an "admission" that unit work was *actually being diverted* to National Lumen Technicians. Commenting that National Lumen Technicians had been in the area where unit employees work is far from a confirmation that those National Lumen Technicians ever performed unit work, and it is not in itself a basis for reasonable concern about diversion. Nor did this statement clarify for the Respondent why the Union had submitted an information request regarding diversion *before* this conversation even occurred. Therefore, the majority's heavy reliance on the August 10 phone call is misplaced.

In sum, the record does not establish that the Respondent was aware of any of the information that my colleagues assert should have been sufficient to make the relevance obvious. Under *Disneyland*, the burden is squarely on the Union to establish presumptive relevance, or apparent presumptive relevance, before any duty to provide the information is triggered. As noted above, the burden is not an exceptionally heavy one, but it is still a burden all the same. By finding an unfair labor practice based solely on what appeared to be the Union's generalized concern, my colleagues seem to impose no burden at all. It does not serve the purposes of the Act to allow a union to freely embark upon what, from the employer's perspective, appears to be little more than a fishing expedition. Nonetheless, going forward, employers should be on notice that, if they do not respond to these apparent fishing expeditions, they may very well be found in violation of the Act.

B. An Employer Does Not Violate the Act if a Union Does Not Share the Underlying Basis for its Information Requests Until the Hearing

In the alternative, my colleagues conclude that even if relevance were not sufficiently demonstrated or self-evident, relevance was properly established at the time of the hearing. It is only at this point that the Respondent learned that the Union made these requests because of the TCC's warnings and the diversion reports from other locals. Because the Union had withheld from the Respondent the objective evidence that could be used to establish relevance, the Respondent had no way of knowing that the Union was not acting on suspicion alone.

In nonetheless finding a violation, my colleagues rely on Board precedent for the principle that "the union is not obligated to disclose those facts [supporting relevance] to the employer at the time of the information request . . . . Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief." *Cannelton Industries*, 339 NLRB 996, 997 (2003); see also *DirectSat USA, LLC*, 366 NLRB No. 40 (2018), enfd. 925 F.3d 1272 (D.C. Cir. 2019); *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344 (2012).[5] This principle, however, does not accord with the Third Circuit's decision in *Hertz*, which held that an employer's

[4] For these same reasons, the Union's repeated statements to the Respondent that the Union had "the right to make an independent determination on whether or not these National Technicians are performing bargaining unit work or have performed bargaining unit work previously" likewise did not establish relevance or demonstrate that relevance was apparent. My colleagues observe that "the Union can hardly be faulted for its assiduousness in pursuing the request for information." I do not fault the Union for its assiduousness; I merely observe the simple fact that the question whether or not a generalized standard of relevance satisfies the Board's standards is not affected by the number of times the request is submitted.

[5] In none of these cases, including *Cannelton Industries*, was this principle necessary to the Board's conclusions because there were circumstances that made the relevance of the information requests reasonably apparent to the respondents at the time of the requests.

duty to furnish information that is not presumptively relevant is conditioned on the union's disclosure to the employer—*at the time it requests the information*—of objective facts sufficient to demonstrate that the Union reasonably believed that its information request was relevant. I believe that the *Hertz* standard is far superior to current Board precedent.

As noted above, *Disneyland Park* offers the General Counsel two options for proving that the Respondent was obligated to provide the requested information: she must establish "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." 350 NLRB at 1258. The second option clearly implies that the information should have been apparent to the employer *at the time of the request*, otherwise the relevance could hardly be deemed "apparent." By allowing the first option to be established *after the fact*, Board law creates a temporal incongruity. I can find no logical justification, and my colleagues offer none, that would support treating the two options in such a fundamentally different way.

The standard articulated in *Hertz* is also more consistent with the policies underlying the Act. The Board's information request jurisprudence is grounded in the duty to bargain. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979) ("The duty to bargain collectively, imposed upon an employer by § 8(a)(5) of the National Labor Relations Act, includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative.")

Pursuant to this duty, the Board has held on countless occasions that an employer must offer to bargain an accommodation with the union when it has legitimate concerns over providing relevant information, such as when the employer raises confidentiality concerns. When the union discloses the underlying factual predicate for its information request, the employer is in a position not only to determine whether the information was relevant but, critically, to articulate and bargain over any concerns it may have about disclosing that information. The Board's standard should encourage this give and take of bargaining, not incentivize a game of "gotcha."

Finally, *Hertz* better comports with the fundamental tenets of due process. In situations such as this one, where relevance is not self-evident, an employer would be forced to respond even to seemingly frivolous information requests. Otherwise, a union could go on what—to any reasonable person in the employer's position—looks like a fishing expedition, only to put its cards on the table for the first time at the hearing. It is unconscionable that an employer could be held liable for violating the Act based *solely* on information it learned *at the very hearing held to determine whether it violated the Act*. And what is a respondent supposed to do if it learns at the unfair labor practice hearing of sufficient information to render an information request relevant? Even if it were to disclose the information during the hearing, my colleagues would presumably still find that it violated the Act by its failure to timely respond to the underlying request.

For all of these reasons, I believe that the Board should adopt the standard articulated in *Hertz*. And because the Union failed to disclose the underlying factual basis for its information request until the hearing,[6] I do not believe that the Respondent was under an obligation to respond to it.[10] Based on the foregoing, I would reverse the judge's decision and dismiss the complaint.

Dated, Washington, D.C. October 10, 2024

Marvin E. Kaplan, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act 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 benefits and protection

[6] The majority writes that they "decline [my] suggestion to sua sponte reconsider and overrule Board precedent." I don't believe that there is anything in my dissent that suggests that they do so. Indeed, in light of their finding that the Union satisfied the *Disneyland Park* standard prior to the hearing, there would be no need for them to reach the issue. See, e.g., *McLaren Macomb*, 372 NLRB No. 58, slip op. at 12–13 (2023) (Member Kaplan, dissenting) (explaining that majority erred by attempting to overrule precedent in a case that they were deciding under extant precedent); enfd. in part *NLRB v. McLaren Macomb,* F.4th (6th Cir. 2024) (enforcing decision by applying extant law allegedly overruled by majority retroactively in Board decision). Rather, I am explaining, in dissent, why I would adopt *Hertz* and why I do not believe that the Respondent violated the Act by failing to provide the requested information.

I further note that the majority asserts that, even if *Hertz* were to apply, the Union properly established relevance based solely on Bemis' statement during the August 10 phone call. But, as I explained above, that statement did not provide an independent basis for relevance.

[10] Given the above, I need not pass on whether the information disclosed at the hearing was sufficient to establish relevance. But assuming it was sufficient, and assuming the Union renewed its information request, the Respondent would then act at its own peril if it failed to respond.

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Brotherhood of Electrical Workers, Local 768 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions 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 in paragraphs 1, 3, 5–14, and 17 of the Union's correspondence on August 10 and 25, September 13, 22, and 23, 2021.

CENTURYTEL OF MONTANA, INC.

The Board's decision can be found at www.nlrb.gov/case/19-CA-283839 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.

Adam Morrison, Esq., for the General Counsel.
Patrick R. Scully and *Amy Knapp, Esqs.* (*Sherman & Howard L.L.C.)*, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on June 14, 2022, in Kalispell, Montana. Based on a charge filed by the International Brotherhood of Electrical Workers, Local 768 (Local 768, the Union or Charging Party) in the above-captioned case, the Regional Director for Region 19 issued a complaint on April 27, 2022. Respondent CenturyTel of Montana, Inc. (CenturyTel or Respondent) filed a timely answer denying all material charges.

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) when it failed to respond to the Union's request for information related to bargaining unit work performed by non-bargaining unit employees. For the reasons detailed below, I find the General Counsel has met the burden to prove this allegation by a preponderance of the evidence.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs.[1] Posthearing briefs were filed by the General Counsel and Respondent and have been carefully considered. Accordingly, based upon the entire record herein, including the post-hearing briefs[2] and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT

A. Jurisdiction

At all times material herein, Respondent, an Oregon corporation with offices and places of business located in the State of Montana (the "Montana facilities"), where it has been engaged in the business of telecommunications. During the 12-month period immediately preceding the issuance of the instant complaint, Respondent, in the normal course and conduct of its business operations, derived gross revenues in excess of $100,000 and purchased and received at the facility goods valued in excess of $50,000 directly from points outside the State of Montana. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is alleged, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

B. Background Facts[3]

Respondent, which provides telephone, internet, and related telecommunications services nationwide, including in Western Montana, has a decades-old collective bargaining relationship with the Union covering Respondent's employees who perform installation, maintenance, and repair work in Northwest Montana (unit employees). This unit employees include Central Office Technicians, who service and maintain all of Respondent's systems at its central offices, such as switching, data, phone, and DSL equipment, and are additionally responsible for maintaining Respondent's connections to remote facilities throughout Northwest Montana. The unit also includes Business Systems Technicians and Customer Service Technicians, who perform installation, service, and repair work on telephone, internet, data, and networking systems for business and residential customers, respectively. (Tr. 24–25; GC Exh. 2.)

George Bland (Bland) is the Union's Business Manager and, as such, is charged with policing numerous collective bargaining

[1] The transcript at page 99, line 22 contains a reference to "Joint statements," which is corrected to read, "*Jencks* statements."

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's Exhibit; "R. Exh." for Respondent's Exhibit; "GC Br. at" for the General Counsel's posthearing brief and "R. Br. at" for Respondent's posthearing brief.

[3] The key aspects of my factual findings above incorporate the credibility determinations I have made after carefully considering the record in its entirety. I based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence and witness demeanor while testifying. Credibility findings need not be all-or-nothing propositions, and it is common for a fact finder to credit some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB 622, 622 (2001). My credibility findings are generally incorporated into the findings of fact set forth above.

agreements, including the most recent contract between Respondent and the Union, which is effective from July 1, 2020 through June 30, 2023. (Tr. 19–20, 22–24; GC Exh. 2.) Bland testified without contradiction that Respondent has, in the past, violated the parties' contract by using non-bargaining unit employees to perform bargaining unit work, which the grievances designate as work performed in the "Montana Local 768 Market Area." The Union filed grievances on February 18, 2018 and September 19, 2018, in each case accusing Respondent of using nonbargaining unit employees to perform work in this "area," which the grievances use interchangeably with the term "jurisdiction." According to Bland's unrebutted testimony, one of these grievances resulted in an award of overtime work for a unit employee whose work had been diverted. (Tr. 43–50; GC Exhs. 5, 6.)

Local 768 participates in an internal IBEW group known as the Telecommunications Council (Council), which consists of representatives of various IBEW locals representing units of Respondent's employees throughout the United States. Bland is Local 768's appointed representative on the Council. (Tr. 32, 41; GC Exhs. 3, 4.) On July 27, 2021,[4] the Council's chairman Joe Lambert (Lambert) emailed its local member representatives, including Bland, forwarding a concern from an unnamed local that the Employer was using nonunit employees designated as "National Technicians" (alternately referred to as "National Techs" or "National Lumen Technicians") to perform certain of its represented employees' unit work. According to Bland, the work in question would, if performed in Northwest Montana, be within the Montana Local 768 Market Area. (GC Exh. 3; Tr. 32–33, 36, 38–39.)

Within the next 24 hours, two additional local representatives responded to the group that the same problem was occurring within their local jurisdictions (in Missouri and Texas). (GC Exh. 3, 4.) On August 9, Lambert emailed the Council representatives a model information request that Bland would later use as a template for the request at issue in this proceeding. (GC Exh. 7; Tr. 52–53.)

A. The Union's Information Request and Respondent's Response

1. The August 10 request[5]

On August 10, Bland emailed Respondent's Manager of Region Operations, John Bemis (Bemis). Bemis was Bland's main and trusted contact at Respondent (in his words, a "straight shooter" and his "go-to guy"); the two men have known and worked with each other for over 14 years. (Tr. 67, 127–128.)

In his cover email, Bland characterized his inquiry as a "request regarding National Techs working in Local 768's jurisdiction." He attached the following list of questions:

> 1. How many National Lumen Technicians are currently working in Local Union 768's jurisdiction? Please provide the exact number of technicians.
>
> ~~2. How many National Lumen Technicians are currently working in the state of Montana? Please provide the exact number of technicians.~~[6]
>
> 3. How long have the National Lumen Technicians been working within Local Union 768's jurisdiction? Please provide the starting date.
>
> ~~4. What work operations have the National Lumen Technicians performed within Local Union 768's jurisdiction? Please provide a list including any and all.~~
>
> 5. Please provide the names of any and all Lumen customers in Local Union 768's jurisdiction that these National Lumen Technicians have performed work for.
>
> 6. Which Managers and Director(s) do these National Lumen Technicians report to? Please provide the names and titles of all.
>
> 7. What Company department or entity dispatches the National Lumen Technicians? How do they receive their work orders?
>
> 8. How do the National Lumen Technicians close out their work orders?
>
> 9. Which Company systems, information and databases do the National Lumen Technicians have access to?
>
> 10. Which Company departments and personnel do the National Lumen Technicians interact with? Please list any and all.
>
> 11. What Company location(s) [within Local 768's jurisdiction][7] do the National Lumen Technicians physically report to?
>
> 12. What Company location(s) in Local Union 768's jurisdiction do the National Lumen Technicians have direct access to?
>
> 13. Which Company buildings [within Local 768's jurisdiction] do these National Lumen Technicians have direct access to?
>
> 14. Which Company buildings [within Local 768's jurisdiction] have these National Lumen Technicians performed work in?
>
> 15. Please identify the scope of work that these National Lumen Technicians perform in Local Union 768's jurisdiction.
>
> 16. Please identify the scope of work that the National Lumen Technicians perform in the state of Montana.
>
> 17. Please provide the most current job brief for Lumen National Technicians.
>
> 18. Please provide the most current job briefs for the Lumen CST, CST2, BST, Network Technician, Combination Technician and Prem. Tech titles.

(GC Exh. 8; Tr. 59.)

Shortly after receiving Bland's email, Bemis called him, curious as to whether the Union was claiming a violation of the collective-bargaining agreement. He asked Bland whether there was "something [he] should know about," and Bland responded that he was looking into whether there were any National Techs performing work in the Union's jurisdiction. According to Bland, Bemis responded affirmatively, adding that there were "a couple" who were either working or had worked in Bland's "area."[8] Bemis' recollection of the conversation was somewhat different; he recalled only telling Bland that there were two

[4] Unless otherwise noted, dates hereinafter refer to the year 2021.

[5] Throughout this decision, my boldened, underlined reference to individual information requests as numbered items (i.e., "*item 17*"), refer to their numbering in Bland's August 10 request (not the complaint).

[6] Items not alleged by the General Counsel's complaint, while useful for reference, have been stricken for purposes of clarity.

[7] While certain of Bland's requests (*items 11, 13 and 14*) sought the identity of Respondent's locations and buildings "in the state of Montana," the General Counsel's allegation encompasses only locations and buildings within the Union's jurisdiction.

[8] Bland testified that Bemis admitted that the National Techs had been present both in Local 768's "jurisdiction" and its "area." Considering

National Techs working in Montana. He did not deny admitting that these two individuals had performed work in Local 768's "area," but offered that he did not "believe" that he explicitly referred to the Union's "jurisdiction." (Tr. 51–52, 130, 141–142.)

On balance, I credit Bland's version of the conversation, which strikes me as far more likely, given the stated subject matter of the email that inspired him to initiate the call—"National Techs working in Local 768's jurisdiction." [9] Following their conversation, Bemis responded by email that he was forwarding Bland's request to Respondent's Senior Manager of Field Operations, Arnell Anderson (Anderson), who would "be able to accommodate" the Union's request. (GC Exh. 9.)

2. The Union's August 25 request

On August 25, Bland emailed Bemis and Anderson, attaching his August 10 request and stating:

> This notification is to inform you that IBEW Local 768 is filing an unfair Labor Practice Charge with the National Labor Relations Board for [Respondent's] failure to provide or communicate the company's intent regarding this information request. (attached)

(GC Exh. 9.)

3. Respondent's September 1 response and request for clarification

On September 1, Respondent's Senior Human Resources Advisor Keller Noble (Noble) emailed Bland a letter setting forth Respondent's position on the Union's requests. In response to the Union's queries regarding what work operations the National Technicians had performed or were currently performing within the Union's jurisdiction,[10] Nobel referred only to the present, responding, "[t]here is no work being performed by National Lumen Technicians in Local Union 768's jurisdiction." (GC Exh. 10.)

In response to the Union's *item 17*, requesting the most current "job brief" (i.e., job description) for the Lumen National Technicians, Noble stated, "[w]aiting for the company to provide. Company internal delay getting the information." (Id.; Tr. 76.) Her responses to the remaining requests alleged by the General Counsel (*items 1, 3, 5–14, and 17*) consisted of a single, cut-and-pasted counter-query:

> Why is this information relevant to administering your Collective Bargaining Agreement when these Lumen employees are not represented by IBEW local 768 and are not performing bargaining unit work?

Id. On September 13, Bland responded:

> [w]hile we appreciate the Company's assertion that these National Technicians are not performing bargaining unit work, the Union has the right to make an *independent* determination on whether or not these National Technicians are performing bargaining unit work or have performed bargaining unit work previously.

(GC Exh. 11.) In response to each of Noble's "relevance" queries, he echoed this explication, responding that the information sought would "assist the Union in making its independent determination on whether or not these National Technicians are performing bargaining unit work or have performed bargaining unit work previously." Id.

4. Respondent's September 13 response to *item 17* (job brief)

In his email forwarding the Union's September 13 relevance clarifications, Bland asked Nobel (in reference to *item 17* of the Union's request for a job description for the Lumen National Technician position), "[h]ave you made any progress with the job descriptions?" Ten minutes later, she responded by forwarding a document she characterized as "one for the Combo Tech." She then stated, "I'm trying to get state specific job descriptions and I just emailed recruiting again today as a reminder to get the rest. I apologize for the delay." (GC Exh. 12.) On September 22, she additionally emailed him three additional documents, which she characterized as the job descriptions for the "CST," "Net Tech" (also referred to as a "Central Office Technician") and "Technician 11," noting that she was still "struggling with recruiting to get the correct descriptions." (GC Exh. 13.)

5. The Parties' final exchange and Union's September 23 request

Bland responded to Noble's September 22 email the same day, thanking her for the job descriptions she had sent and adding, "when can I expect a reply to the other information I requested?" The following day, she responded, referring him to her prior representation that there was, as of August 10, no work being performed by National Lumen Technicians within the Union's jurisdiction. (GC Exh. 14.) Ninety minutes later, he replied:

> Please answer all questions in order for IBEW Local 768 to understand the scope and performance of National Technicians, that have, or may perform bargaining unit work in our jurisdiction. The Union has a right to make an Independent determination on whether or not National Technicians are performing bargaining unit work or have performed bargaining unit work in our jurisdiction.
>
> Provide complete answers to <u>all</u> questions no later than Close Of Business today September 23, 2021. Failure to provide the requested information will result in IBEW Local 768 filing an Unfair Labor Charge.

Id. Thirty minutes later, Nobel responded:

> The requested information is outside the scope of IBEW 768's jurisdiction based upon the fact that the Company recognizes the Union as the exclusive representative of IBEW 768 employees in the job titles listed in the wage schedule of Article 18 of the parties CBA for the purposes of collective bargaining in respect to rates of pay, hours of work and other terms and conditions of employment. Thus, your request for information regarding Lumen employees not covered under the IBEW 768 CBA, is outside the scope of IBEW 768 jurisdiction as outlined in the collective bargaining agreement.

Id. It is undisputed that, to date, Respondent failed to provide

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that the parties have historically used the terms interchangeably (for example, in the Union's prior grievances), I do not consider this an inconsistency.

[9] I do, however, credit Bemis' testimony regarding the timing of this conversation as having occurred after he had received the information request. While Bland recalled talking with Bemis *prior* to emailing his request, I find it unlikely that he did so, especially in light of the fact that the request itself contains no reference to Bemis' verbal admission regarding the National Techs' work.

[10] These items (*item 4 and 15* of the request) are not alleged by the General Counsel as the basis of a violation.

the Union with information responsive to *items 1, 3 and 5–14*, and provided only the information detailed above in response to *item 17*.

Decision and Analysis

A. Jurisdiction

At all times material herein, Respondent, an Oregon corporation with offices and places of business located in the State of Montana (the "Montana facilities"), where it has been engaged in the business of telecommunications. During the 12-month period immediately preceding the issuance of the instant complaint, Respondent, in the normal course and conduct of its business operations, derived gross revenues in excess of $100,000 and purchased and received at the facility goods valued in excess of $50,000 directly from points outside the State of Montana. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is alleged, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

B. The Parties' Positions

The General Counsel argues that it has demonstrated the relevance of each of the Union's August 10 information requests (as re-requested on August 25 and September 23), based on its need to determine whether National Techs had been performing work within its jurisdiction. Respondent argues that the Union failed to establish an objective, reasonable basis for its requests and further argues that it provided certain information in response to the requests, including a "the relevant 'job brief' for National Technicians." (R. Br. at 14.)

C. The Applicable Law

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). As such, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act without regard to the employer's subjective good or bad faith." *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012) (citing *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979)).

A valid information request imposes a duty upon the non-requesting party to respond in a timely manner, either by complying with the request or by asserting its rationale for not doing so. "Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act." *Columbia University,* 298 NLRB 941, 945 (1990), citing *Ellsworth Sheet Metal*, 232 NLRB 109 (1977); see also *Daimler Chrysler Corp*., 331 NLRB 1324, 1329 (2000); *Interstate Food Processing*, 283 NLRB 303, 304 at fn. 9 (1987). In evaluating the possible relevance of a given request, the Board does not pass upon the merits of the contract violation or unfair labor practice it serves to assess; thus, the fact that the employer's conduct is ultimately found benign is no defense to its failure to provide the information. See *Racetrack Food Servs.*, 853 NLRB 687, 700 (2008) ("Even if the Union was mistaken in its claims, the information should have been provided, as the Union established the relevance of its request.") (citations omitted).

1. The duty to provide information regarding nonunit employees

Unlike information pertaining to terms and conditions of employees within the bargaining unit, which is generally considered presumptively relevant, when the request involves non-unit employees or operations, the union has the burden of establishing the relevance of the requested information. *Postal Service*, 360 NLRB 762, 766 (2014). Specifically, "the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances." *Disneyland Park*, 350 NLRB 1256, 1258 (2007) (citations omitted). A union satisfies this burden by demonstrating a reasonable belief supported by objective evidence[11] for requesting the information, *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988), and potential or probable relevance is sufficient to give rise to the employer's obligation to furnish the information. *Disneyland Park*, 350 NLRB at 1258; *Shoppers Food Warehouse Corp.*, 315 NLRB 258 (1994).

As the Board has explained:

> The union can satisfy this burden by showing that "there is a logical foundation and a factual basis for its information request. The standard to be applied in determining the relevance of information relating to nonunit employees is, however, a liberal 'discovery type standard.'" *Postal Service*, 310 NLRB 391, 391 (1993) (quoting *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967)). The Board only needs to find that the requested information is probably relevant. Id. at 391–392. Moreover, the union's burden of proving the relevance of information about nonunit employees is not exceptionally heavy. *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

KGW-TV, 367 NLRB No. 71, slip op. at 2 (2019).

Where the relevance of information is not apparent based on the circumstances, "[t]he 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." *Disneyland Park*, 350 NLRB at 1258 fn. 5. In this regard, the Board has held that a "hypothetical theory" is insufficient, *Sheraton Hartford Hotel*, 289 NLRB 463, 464 (1985)), and that "mere incantations" or "bare suspicions" of potential relevance are insufficient to trigger an employer's duty to provide

[11] A union may reasonably rely on hearsay, including the observations of bargaining unit employees, in determining a potential violation and thus asking for information from the employer. *Walter N. Yoder & Sons, Inc.*, 270 NLRB 652, 655 fn. 6 (1984), enfd. in relevant part 754 F.2d 531, 534 (4th Cir. 1985); see also *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186, 1188 (1997); *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994); *Magnet Coal*, 307 NLRB 444, fn. 3 (1992); *Leonard B. Herbert, Jr.*, 259 NLRB 881, 885 (1981), enfd. 696 F.2d 1120 (5th Cir 1983), cert. denied 464 U.S. 817 (1983).

information. *Postal Service*, 308 NLRB 1305, 1311 (1991); see also *G4S Secure Solutions (USA), Inc.*, 369 NLRB No. 7, slip op. at 2 (2020) ("[s]uspicion alone is not enough"). While the union must have an objective, factual basis for request, it is not to disclose those facts to the employer at the time of the information request. *Cannelton Indus.*, 339 NLRB 996, 997 (2003) (". . . it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief"); accord *DirectSat USA, LLC*, 366 NLRB No. 40, slip op. at 4 (2018); *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2344 (2012). "Whether a union has gone beyond 'mere suspicion' to show relevance is a factual question to be decided on a case-by-case basis." *Postal Service*, 310 NLRB 701, 702 (1993).

Once the union has proven the information it requested is relevant to its statutory obligations of performing its duties as the bargaining unit representative, "the employer has the burden to prove a lack of relevance . . . or to provide adequate reasons as to why [it] cannot, in good faith, supply such information." *Calmat Co.*, 331 NLRB 1084, 1095 (2000) (quoting *San Diego Newspaper Guild v. NLRB*, 548 F.2d at 867). It is well established that an employer may not refuse to furnish requested information solely on the basis that it concerns matters outside the scope of the bargaining unit represented by the union. *NLRB v. Acme Industrial*, 385 U.S. at 436; *Curtiss-Wright Corp., Wright Aeronautical Division v. NLRB*, 347 F.2d 61 (3d Cir. 1965), enfg. 145 NLRB 152 (1963).

2. The duty to provide information regarding unit work diversion

The preservation or diversion of unit work is a subject of mandatory bargaining under the Act. *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 209 (1964). It follows that a union seeking to determine if its represented employees' work is being diverted will necessarily require information regarding the terms and conditions of the nonunit employees performing such work. See, e.g., *Teachers Coll., Columbia Univ. v. NLRB*, 902 F.3d 296, 302 (2018) (employer violated Act by refusing to provide union information "regarding employees outside the bargaining unit in order to determine whether the employer was improperly transferring unit work to them").

Circumstances justifying an information request based on a concern over the improper transfer of unit work have been found in a variety of situations. While first-hand observation of nonunit employees actually performing unit work will almost certainly suffice, see, e.g, *Leland Stanford Junior University*, 262 NLRB 136, 154–156 (1982), such hard evidence is not necessary.[12] Rather, a unit may reasonably suspect, based on less direct evidence, that nonunit workers are performing unit work, entitling the union to information concerning such individuals. *NLRB v. Rockwell-Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969) (request for nonunit employee information relevant where union had "reasonable grounds to fear that unit work [was] being transferred" outside the unit).

As noted, reliance on second-hand reports of an employer's incursion on unit work may support a nonspeculative information request. See also *Teachers Coll., Columbia University v. NLRB*, 902 F.3d at 303 (affirming finding that unit members' reports of work transfers properly supported information request for information regarding nonunit employees); see also *Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 536 (4th Cir. 1985); *Magnet Coal, Inc.*, 307 NLRB 444, 444 fn. 3, 448 (1992), enfd. 8 F.3d 71 (D.C. Cir. 1993). In addition, an employer's own conduct, including failure to deny an accusation of work diversion, may lend further credence to the union's rationale for relevance. As the Court of Appeals for the Seventh Circuit stated in one such case:

> It was reasonable for the Union to rely on the . . . observations of union officials, employee reports and records in forming its reasonable suspicion that the [employer] was diverting work to [a nonunion business the employer operated]. Therefore, considering that [the employer] did not present any evidence contradicting the contents of these reports and observations, [they] alone constitute substantial evidence . . . that the Union reasonably suspected that [the employer] was diverting work.

NLRB v. George Koch Sons, Inc., 950 F.2d 1324, 1333 (7th Cir. 1991) (citations omitted).

Indeed, an employer that equivocates or otherwise "fudges" its answer when confronted about transferring work may provide the union with a reasonable basis for an information request of the subject. In *Dusquesne Light Co.*, for example, the employer created a new position as part of a company reorganization; discussions between union officials and management about the job duties of the new position left the union concerned that they were performing bargaining unit work. This, it was found, was sufficient to establish the requisite "sufficiently objective basis" for its belief that bargaining unit work was being diverted. Id. at 1043; see also *Clear Channel Outdoor*, 347 NLRB 524, 528 (2006) (failure to deny union's accusation of work transfer in part justified information request).

Finally, that an employer has a history of transferring unit work to nonunit employees is also properly taken into account when assessing the union's reasonable belief that another violation has occurred, see *Murray American Energy*, 366 NLRB No. 80, slip op. at 30 (2018) (distinguishing request based on ongoing subcontracting issue from "generalized conclusory explanation"), enfd. 765 Fed.Appx. 443, 2019 U.S. App. LEXIS 7252, 2019 WL 1239801 (D.C. Cir. Mar. 12, 2019).

D. Respondent Failed to Provide Relevant Information in Violation of Sections 8(a)(5) and (1) of the Act

The pertinence of the information Local 768 requested to the issue of whether National Techs had been performing Local 768 work, is not substantively disputed by Respondent. Nor does Respondent claim that the requests sought confidential or proprietary information or were confusing or overly burdensome. Respondent instead argues (a) that it was not obligated to respond to Local 768's request because the Union has failed to demonstrate that it had an "objective factual basis" for its belief that the National Techs were, in fact, performing unit work; and alternately, (b) that it provided "*every piece of information* outlined" in the General Counsel's complaint. (R. Br. at 16.) As set forth below, I find each of Respondent's arguments without merit.

1. Local 768 established the relevance of the

[12] Indeed, allowing an employer to withhold relevant information until and unless it is caught "in the act" of transferring unit work would be the near equivalent of requiring the union to prove its grievance before utilizing an information request to evaluate its chances of success—a standard the Board explicitly rejects. See *Racetrack Food Servs.*, 853 NLRB at 700 (fact that the union was ultimately mistaken in its belief as to accretion no defense to a failure to provide relevant information).

requested information

With respect to Respondent's first argument, I find that the General Counsel has proven that at the time of its August 10 information request, the Union had established and demonstrated to Respondent the relevance of the requested information based on its reasonable belief on objective facts, which relevance should, in any event, have been apparent to Respondent under the circumstances.

The Union's requests—seeking the identity and tenure of the National Techs, the nature of their work assignments and how much unit work they performed—were plainly aimed at ascertaining whether Respondent had been violating the parties' contract by utilizing the National Techs to perform Local 768 work. See, e.g., *New York and Presbyterian Hospital v. NLRB*, 649 F.3d 723, 730 (D.C. Cir. 2011) (finding request for similar information relevant to question of whether nonunit employees were performing bargaining unit work). Bland, by his undisputed testimony, even more thoroughly laid out the pertinence of each item of information requested.

It is undisputed that the parties had a history of disagreement over what constituted work within Local 768's jurisdiction or "area," as evidenced by prior information requests and grievances filed by the Union on this very issue. Moreover, when confronted by Bland regarding the issue, Respondent's representative, Bemis, did not deny that unit work was being performed by the National Techs but instead obfuscated, admitting they had "been" in the Union's jurisdiction "a few times."[13] Under the circumstances, the relevance of the request (i.e., its "objective factual basis") should have been apparent to Respondent. See *Murray American Energy*, 366 NLRB No. 80, slip op. at 29 (relevance of request apparent where employer's use of contractors to perform bargaining unit work "was an ongoing and repeated source of dispute between the parties" and subject of prior information requests and grievances).

Even assuming that the relevance of the Union's request was not apparent to Respondent upon its receipt of same, the General Counsel has proven that the Union had an ample objective, factual basis for requesting this information. It is true, as Respondent asserts, that an information request cannot be justified based solely on a bald hunch by bargaining unit employees that their work is being diverted. It does not follow, however, that the requesting union provide definitive proof of a work transfer in order to "trigger" the employer's duty to provide information about it. *Bentley-Jost Corp.*, 283 NLRB 564, 568 (1987) (citations omitted). Indeed, in keeping with the principle that a requesting party need not be correct in its suspicion of contract violation, a union seeking information relating to a potential work transfer contract must merely show it "a reasonable belief supported by objective evidence" that there was an unlawful diversion of the work away from unit employees. *Teachers Coll., Columbia Univ. v. NLRB*, 902 F.3d at 302–303 (citing *Disneyland Park*, 350 NLRB at 1257–1258).

Based on these principles, I find that the Union satisfied its duty to show the relevance of its information request to its representational duties. It is undisputed that, in 2017 and 2018, Respondent had used non-bargaining unit labor to perform work within Local 768's jurisdiction, causing the Union to file grievances against Respondent. Under the circumstances, Bland's reaction to the 2021 reports about Respondent using nonunit workers to perform unit work in other locals' jurisdiction—to inquire as to whether the same thing was happening to Local 768's work—was diligent and reasonable. After Bemis, whom Bland considered an honest broker, confirmed that at least National Techs had worked in Bland's "area" (i.e., the Montana Local 768 Market Area), his repeated pursuit of the requested information was more than understandable.

In support of its argument that the Bland's conduct was based on mere speculation and conjecture, Respondent cites *G4S Secure Solutions*, 369 NLRB No. 7 (2020). In that case, a union, requested the employer provide a copy of a contract it believed would show that certain unit employees were jointly employed with a third party. The sole basis for its suspicion, however, was that the same third party had served as a joint employer along with the employer's predecessor. Without more, the Board found, the Union had failed to state (nor did it furnish an objective factual basis for) a similar joint-employer status would be reflected in the terms of the requested contract. Respondent also cites to *Disneyland Park*, supra, a case in which the Board refused to find a violation for an employer's failure to provide subcontracting information. Like the *G4S* case, that decision also hinged on the fact that the request in question sought information in support of an infraction (subcontracting resulting in the loss of unit work), that the union failed to assert. See 350 NLRB at 1258 fn. 5.

Here, by contrast, the Union does not ask me (or the Board) to "backfill" its rationale for relevance. Local 768, based on objective information provided by its sister locals about Respondent's use of National Techs, sought to ensure that Respondent's recent history of work diversion within the Montana Local 768 Market Area was not repeating itself. This theory requires no assumption that Respondent had modeled its conduct on that of a predecessor employer; nor is there any question that, were the reported work diversion extending into Local 768's jurisdiction, the union would be entitled to move to enforce its contractual recognition rights (i.e., irrespective of any "loss" of work required by a *G4S*-type subcontracting clause). As such, and especially considering Bemis' admission that the National Techs had been present in Local 768's "area," the Union was hardly acting on a "mere suspicion" when it continued to pursue the requested information.

2. Respondent failed to adduce credible evidence that it complied with the requests

I further find that Respondent's alternate argument—that it in fact complied with the information request—factually unsupported by the record evidence.

It is undisputed that the only documents provided by Respondent in response to Bland's request were a handful of job descriptions. At hearing, Respondent called Senior Human Resources Advisor Noble to testify as to Respondent's effort to comply with item 17 of the request, which sought "the most current job brief" for the National Techs. As described above, Noble testified that she sent several job descriptions to Bland, none of which appear to be the requested document. Her final communication to Bland on the subject, in fact, was that she was still "struggling" to locate the "correct" responsive documents. Under the circumstances, I find no credible basis for Respondent's assertion that it complied with this portion of the Union's

[13] Given Bemis' reaction, I find Respondent's later written representations to the Union that no bargaining unit work had been performed by the National Techs dubious at best. Cf. *KGW-TV*, 367 NLRB No. 71 (2019) (finding employer made a sufficient response to information request by consistently informing union that it had not utilized any temporary employees to perform bargaining unit work).

request.

Respondent's posthearing brief also includes a "Hail Mary" argument that, despite its consistent objection to the relevance of *items 1, 3* and *5–14* of the Union's request, it did in fact provide information responsive to the requests, albeit in response to different items or in prior correspondence. For example, despite flatly refusing, in response to *item 4* of the request, to identify the work operations that had been performed by the National Techs within Local 768's jurisdiction, Respondent now claims that its representation that "[t]here are two National Technicians in the state of Montana" and that, as of September 10, National Techs were not performing Local 768 work, combined with its muddled rejoinders to other requests[14] excused it from responding to items *1, 3 and 12–14*, which sought further, detailed information about the nature, extent and location of Local 768 work performed by National Techs. Such proffered justifications are too little, too late and too clever by half. The reality is that Respondent stonewalled Local 768 on the pivotal question of whether its National Techs had performed unit work and then, at best, dropped casual and confusing hints as to the details of the work they did perform. This does not constitute a good-faith response.

Accordingly, I find that Respondent failed to provide the information requested by the Union, in violation of the Act.

CONCLUSIONS OF LAW

1. Respondent CenturyTel of Montana, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 768 is a labor organization within the meaning of Section 2(5) of the Act with Section 9(a) status under the Act.

3. The following employees of Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

> The employees identified in Article 2, Section 2.1 of the collective bargaining agreement between the Union and CenturyTel of Montana, Inc. effective July 1, 2020 through June 30, 2023, excluding confidential employees, guards, professional and supervisory employees as defined by the Act.

4. At all material times, Respondent has recognized the Union as the designated exclusive collective-bargaining representative of the unit employees.

5. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to supply the following information to the Union:

> (a) The number of National Lumen Technicians who have worked within the Union's jurisdiction;
> (b) The starting date and length of time the individuals identified in response to the previous item have worked within the Union's jurisdiction;
> (c) The names of all Lumen customers within the Union's jurisdiction for whom any National Lumen Technician has performed work;
> (d) The identity, including names and titles, of any Respondent manager or director to whom National Lumen Technicians report;
> (e) The identity of the department or entity that dispatches National Lumen Technicians and an explanation of how National Lumen Technicians receive their work orders;
> (f) An explanation of how National Lumen Technicians close out their work orders;
> (g) The identity of any Respondent system, information or database to which National Lumen Technicians have access;
> (h) The identity of any Respondent department and/or personnel with which National Lumen Technicians interact;
> (i) The locations within the Union's jurisdiction to which National Lumen Technicians physically report;
> (j) The identity of all Respondent buildings within the Union's jurisdiction in which National Lumen Technicians have performed work; and
> (k) The job brief for Lumen National Technicians in effect at any time since August 10, 2021.

2. The unfair labor practices, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that 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. Specifically, I shall recommend that Respondent be ordered to supply the requested information, set forth above, to the Union.

Having found that Respondent failed and refused to provide requested relevant information and/or failed to timely provide requested relevant information to the Union, I shall order Respondent to cease and desist from this action and to provide to the Union any relevant information as specified in the recommended Order below.

Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, CenturyTel of Montana, Inc., Kalispell, Montana, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to timely and completely supply information to the Union that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees of its employees as identified in Article 2, Section 2.1 of the collective bargaining agreement between the Union and CenturyTel of Montana, Inc. effective July 1, 2020 through June 30, 2023.

(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 the Union with the following information it requested on August 10, August 25, and September 23, 2021:

(i) The number of National Lumen Technicians who have

[14] Such statements include, "[t]he technicians support National equipment that is found in 23 locations in Montana, most locations are found in leased AT&T or Zayo locations" and "[t]he technician supports our national network and customers in the state." See GC Exh. 10 at 4.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

worked within the Union's jurisdiction;
(ii) The starting date and length of time the individuals identified in response to the previous item have worked within the Union's jurisdiction;
(iii) The names of all Lumen customers within the Union's jurisdiction for whom any National Lumen Technician has performed work;
(iv) The identity, including names and titles, of any Respondent manager or director to whom National Lumen Technicians report;
(v) The identity of the department or entity that dispatches National Lumen Technicians and an explanation of how National Lumen Technicians receive their work orders;
(vi) An explanation of how National Lumen Technicians close out their work orders;
(vii) The identity of any Respondent system, information or database to which National Lumen Technicians have access;
(viii) The identity of any Respondent department and/or personnel with which National Lumen Technicians interact;
(ix) The locations within the Union's jurisdiction to which National Lumen Technicians physically report;
(x) The identity of all Respondent buildings within the Union's jurisdiction in which National Lumen Technicians have performed work; and
(xi) The job brief for Lumen National Technicians in effect at any time since August 10, 2021.

(b) Within 14 days after service by the Region, post at its Kalispell, Montana job location copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 10, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

(d) It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: Washington, D.C. December 6, 2022

APPENDIX

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

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

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 benefits and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to timely and completely supply information to the International Brotherhood of Electrical Workers, Local 768 (the Union) that is relevant and necessary to its performance of its duties as the exclusive collective-bargaining representative of its employees as identified in Article 2, Section 2.1 of the collective bargaining agreement between the Union and CenturyTel of Montana, Inc. effective July 1, 2020 through June 30, 2023.

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 and complete manner, the following information:

(a) The number of National Lumen Technicians who have worked within the Union's jurisdiction;
(b) The starting date and length of time the individuals identified in response to the previous item have worked within the Union's jurisdiction;
(c) The names of all Lumen customers within the Union's jurisdiction for whom any National Lumen Technician has performed work;
(d) The identity, including names and titles, of any Respondent manager or director to whom National Lumen Technicians report;
(e) The identity of the department or entity that dispatches National Lumen Technicians and an explanation of how National Lumen Technicians receive their work orders;
(f) An explanation of how National Lumen Technicians close out their work orders;
(g) The identity of any Respondent system, information or database to which National Lumen Technicians have access;
(h) The identity of any Respondent department and/or personnel with which National Lumen Technicians interact;
(i) The locations within the Union's jurisdiction to which National Lumen Technicians physically report;
(j)The identity of all Respondent buildings within the Union's jurisdiction in which National Lumen Technicians have performed work; and
(k) The job brief for Lumen National Technicians in effect at any time since August 10, 2021.

CENTURYTEL OF MONTANA, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-283839 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

[16] 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."

Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.