UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

THE BOEING COMPANY

and **Case 19-CA-093656**

SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES IN AEROSPACE, affiliated with INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 2001

Anastasia Hermosillo Esq., for the General Counsel.
Charles N. Eberhart, Esq., for the Respondent.
Thomas B. Buescher, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

Dickie Montemayor, Administrative Law Judge. This case was tried before me on February 4, 2014, in Seattle, Washington. The case involves an allegation that Boeing (the Respondent) failed to provide the Society of Professional Engineering Employees in Aerospace, affiliated with International Federation of Professional & Technical Engineers, Local 2001 **(**the Union**)** certain information requested by the Union. The employer, for its part, denies that it failed to bargain in good faith, or that it failed to provide the Union information it was required to provide under the Act. I find that Respondent violated the Act as alleged.

This case was originally a part of a group of four cases that were consolidated pursuant to a complaint and notice of hearing dated April 29, 2013. Prior to the hearing on the consolidated cases, Respondent on May 10, 2013, moved to sever this case. By Order dated May 14, 2013, Respondent's motion to sever was granted and this matter proceeded to trial independently of the other three consolidated cases.[1]

[1] On May 15, 2014, Administrative Law Judge (ALJ) Gerald Etchingham issued a decision in The Boeing Company and Society of Professional Engineering Employees in Aerospace, IFTPE Local 2001, JD(SF)–23–14. In that case, the ALJ concluded that Respondent violated Sec. 8(a)(1) of the Act by "surveilling employees" and "creating an impression of surveillance" of employees. I make my findings that the employer violated the Act independently, and without reliance upon, Judge Etchingham's decision in the prior case.

The complaint alleged that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union certain relevant requested information. Respondent filed a timely answer to the complaint denying all violations of the Act.

Counsel for the General Counsel, the Union, and the Respondent filed briefs in support of their positions on March 12, 2013. On the entire record, I make the following findings, conclusions of law, and recommendations.

FINDINGS OF FACT

I. Jurisdiction

The complaint alleges, Respondent admits, and I find that at all material times, Respondent has been a State of Delaware Corporation with its headquarters in Chicago, Illinois, that manufactures and produces military and commercial aircraft at various facilities throughout the United States, including Everett, Washington, and others in Seattle, Washington and the Portland, Oregon metropolitan areas.

The complaint further alleges, Respondent admits, and I find that at all material times Respondent, in conducting these operations, derived gross revenues in excess of $500,000 and purchased and received at its corporate headquarters products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Washington.

The complaint alleges, Respondent admits, and I find that Respondent is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and further, the Union, is, and has been 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 Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. Labor Organization

The complaint alleges, Respondent admits, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the act.

III. The Alleged Unfair Labor Practices.

A. Background

Respondent, is an airplane manufacturer, with facilities located in Washington; Oregon; California; Mesa, Arizona; Texas; Charleston, South Carolina; St. Louis, Missouri; Philadelphia, Pennsylvania; and Huntsville, Alabama. (Tr. 47–49:193.) Respondent employs between 150,000 and 200,000 employees nationwide. (Tr. 47.) Respondent is divided into four major groups: (1) Boeing Commercial Airplanes("BCA"); (2) Boeing Defense and Space Group ("BDS"); (3) Engineering Operations and Technology ("EO&T"); and (4) Shared Services Group ("SSG"). (Tr. 45.)

1. The professional and technical bargaining units

The Union has a long history of representation with Respondent and has represented many employee bargaining units dating back to the 1940s. (Tr. 143–144.) This case involves the professional and technical units whose work is covered by the professional and technical collective-bargaining agreements ("professional agreement" and "technical agreement"; collectively, the "agreements"). (GC Exh. 3; GC Exh. 2.) The professional agreement covers five bargaining units. (Tr. 43; GC Exh. 3 at 1–2). Employees covered by the professional agreement perform engineering work. (Tr. 43–44). The technical agreement covers three bargaining units. (GC Exh. 2 at 1.) Those covered by the technical agreement perform jobs connecting engineering to manufacturing, such as sequencing or drafting. (Tr. 44.)

2. Respondent's use of non-Boeing and nonbargaining unit labor

In addition to its own employees, Respondent also utilizes "Non-Boeing labor." Non-Boeing labor refers to work performed by third parties, such as a contractors or vendors. Non-Boeing labor may work in the same facilities as represented employees and perform bargaining-unit work. (Tr. 49.) "Non-Bargaining-unit labor" refers to Respondent's employees who are not part of the bargaining units. (Tr. 50.) These employees may also perform bargaining unit work at the same facilities as SPEEA represented employees; if, for example, the employee is on travel assignment from an unrepresented facility. (Tr. 50.) However, these employees generally work at nonunionized facilities. (Tr. 50.) Nonbargaining unit labor may perform both engineering and technical work. (Tr. 50.)

3. Professional and Technical Employee Compensation

The compensation scheme for SPEEA-represented professional and technical employees can best be described as a salary or wage pool wherein specific rates or wages are not identified but rather wage raises are pooled together and divided amongst employees. (Tr. 44.) The agreements provide for a guaranteed "minimum increase percentage," the amount received beyond the minimum is determined by two other variables: (1) individual employee performance; and (2) how the employee's current pay compares to the Respondent's salary reference table ("SRT"). (Tr. 45, 173–174; GC 2 at 24–25; GC 3 at 24.) Respondent's SRTs are charts which "display the range of salaries [Respondent] has established for the jobs . . . performed by nonexecutive salaried employees." (R. 13 at 3.) Respondent maintains an SRT for each employee position. (Tr. 235.)[2]

B. Negotiations

1. Overview

During all times material to this case, the parties were engaged in contract negotiations which formally began in April of 2012. (Tr. 55.) At the time of negotiations, the Union sought to reach a "status-quo agreement." Their desire was to extend the prior agreement for four more years. (Tr. 62.) When Respondent presented its first proposal it proposed to cut the current five-

[2] See GC Br. at p. 3 and 4 for a more detailed, concise, and accurate explanation of how the SRTs are created.

percent wage pools to three-percent. (Tr. 150, GC Exh. 5 at 37, GC Exh. 6 at 34.) The Union presented the proposal to its membership. The Union members rejected the proposal. (Tr. 157, 229.)

2. The bargaining teams

The Union's bargaining team consisted of 25 members; 10 of whom were bargaining unit employees and 15 were SPEEA staff. (Tr. 57.) Director of Strategic Development Rich Plunkett ("Plunkett") was a SPEEA staff member on the Union's bargaining team. (Tr. 41.) Plunkett's role on the team was to advise and speak on behalf of the Union. (Tr. 53–54.)

Respondent's negotiation team principals were: BCA Vice President of Engineering Mike Delaney; Vice President of Commercial Aviation Services Support Todd Zarfos; Director of Engineering Conrad Ball; Director of EO&T Mark Burgess; Western Region Director of Employee Relations Bill Hartman; BCA Vice President of Human Resources Julie Ellen Acosta; Director of Human Resources Engineering Rich Hartnett; and Vice President of Labor Relations Gene Woloshyn. (Tr. 58–59.)

IV. The Information Violation

A. The Information Requests at Issue in This Case

The allegations in this case rest on information requests that were sent by the Union to the Respondent on September 11 and 20, 2012. The information requests were triggered by a Bloomberg news article and statements made at the bargaining table. The article was published online September 6, 2012, and was titled "Boeing May Use Non-Seattle Engineers as Costs Up." The thrust of the article was that Boeing was considering having some work done at other less expensive sites. The article quoted Mike Delaney, Boeing of America chief engineer as saying, "we're committed to Puget Sound . . . But we will do—and I have told SPEEA this—when we do the next airplane, I will do and use whatever resources it takes to launch the airplane." (GC Exh. 7 p. 1.) "We're willing to pay a premium to be in Seattle because there's a base, there's great capability, we've got a great team, but you if took SPEEA's proposal, Boeing's costs would balloon and it wouldn't be competitive. No customer will pay that kind of premium." (GC Exh. 7 p. 2.) The "proposal" was a clear reference to the Union's proposal to maintain the status quo.

Within 2 days of the article's publication, the Union on September 11, 2012, submitted an information request which directly referenced statements made at the bargaining table and statements made to the media presumably referring to the statements attributed to Delaney. Some of the initial requests are no longer in issue in this litigation and have been purposely omitted. The requests which are still in issue are set forth below:

> 1. With respect to your statements that engineering costs are higher in Puget Sound than many other Boeing locations. Please provide the following for each of the past three fiscal years for the Puget Sound area, St. Louis. MO. Philadelphia, PA. Houston, TX, San Antonio, TX, Huntsville, AL, Charleston. SC and any other Boeing location where engineers and technical employees perform work similar to that performed by members of the SPEEA bargaining units in Puget Sound:

a. Detailed calculations and explanations of how Boeing calculates productivity at each of these locations, including a line by line item breakout of local engineering labor costs at each location including benefits and any other costs allocated as engineering labor costs.

b. Detailed calculations and explanations of how Boeing calculates engineering costs per Unit of production (including specifically defining the unit of production).

c. A detailed line by line summary of engineering overhead for each location.

2. With respect to your statement that Boeing is willing to pay a "premium" to do engineering in Seattle and the Puget Sound area. Please provide the following information·

a. What is the current premium paid to the engineering employees, if any?

b. Provide a detailed explanation of how that "premium" is calculated, the data supporting that calculation and the data from other locations described in request number 1 above showing how they do not pay such a "premium".

3. With respect to your statement that with SPEEA's current proposal Boeing's engineering costs would "balloon and it [Boeing] would not be competitive" and "no customer would pay that kind of premium", please provide the following:

b. All information available or known to you about projected changes in engineering costs for the competitors over the next three years.

d. A detailed statement of exactly how the "premium" you claim that no customer would pay is calculated and all information available or known to you support such a statement.

4. With respect to the statement in the September 7, 2012, message to employees that "Boeing cannot sustain the rate of growth outlined in the previous contract", please provide the following information:

b. All data, including all assumptions and analyses used to make this determination.

c. A projected date for when growth rate becomes unsustainable, including all data, assumptions and analysis used to make this determination. (GC Exh. 8.)

On or about September 20, 2012, the Union submitted another request for information. The Union asked to be provided information. The requests that are still in issue are set forth below:

1. Amounts paid by Boeing to outside entities of any kind for persons who perform bargaining unit work. Data should be broken down to indicate the number of engineers, the type of engineers and the time period they have worked each year. The same

breakdown should be made for technical employees. To be clear, the data should be provided in a manner that will allow SPEEA to do a simple arithmetic calculation showing the cost per hour of a contract employee to Boeing for the period of time he/she worked during these four years.

3. The compensation paid to engineers and technical employees provided by outside entities of any kind to Boeing who are performing bargaining unit work. This data should be broken down by skill type and separately list not just base pay but things like overtime and fringe benefits, to the extent they exist. (GC Exh. 10.)

Respondent did not provide the information that was requested by the Union instead, on September 25, 2012, Mark Brenaman, the employee relations specialist, responded via email to the first request. In his email he stated:

1. As the Company has communicated consistently throughout the negotiation process, wage rates in the Puget Sound are well above the national market. This information is available publicly from sources to which the Union has ample access. The Company also has information available through ERI illustrating the differences between the specific markets identified in your request. Moreover, the Company has also presented extensive data to the Union in previous meetings regarding our position on wages relative to market. Much of that data was presented months ago, in our April 19th and 20th sessions. Given the confidential nature of much of the ERI data and the information presented during our meetings, the Company agreed to provide the presentations subject to a confidentiality agreement. We iterated on a proposed confidentiality agreement to the Union, but received no final response. If the Union now wishes to revisit its position on the execution of a confidentiality agreement, the Company would be happy to discuss it further.

2. It is a statistical and publicly available fact that the Puget Sound has higher wage rates than other geographic regions. See the Company's response to request number 1 above.

3. This request is vague, ambiguous, and overbroad, and calls for information with at best tangential relevance to the ongoing negotiations. It contains such vague requests as "information on the "quality differences (perceived and actual), materials, workmanship, engineering, functionality, service, on time delivery and any kind of government subsidy received between Boeing products and the competitors' products that would be purchased by customers. If there are specific questions the Union has relating to these topics, we ask that it pose those specific questions and state their relevance to the ongoing collective bargaining .

As to the requests that the Company cost out the Union's proposals article by article, the Company is under no obligation to cost out the Union's proposals in this fashion. However, the Company has evaluated the Union's wage proposal of 7.5% each year and

determined that if accepted, it would place the bargaining unit's salaries at almost 30% above the market. (See Respondent's Chart) [3]

4. As noted in response to the above requests 1-3, while the Company seeks to remain market leading, it must provide compensation that is sensitive to the current market. No company can sustain its competitiveness if its cost of labor continues to significantly outpace the growth among its market competition. The Company is not financially insolvent or claiming a present inability to pay. It is simply reiterating that wage increases must be based on fiscally prudent analysis of the Company's position relative to market in order to remain and sustain the Company's competitive position. We shared the basis for our opinions in detail during the Company's presentation on the competitive business environment delivered during our August 16, 2012 meeting and throughout the negotiations to date.

On October 5, 2012, Boeing and the Union entered into the confidentiality agreement referenced in paragraph one of Brenaman's emails. (GC Exh. 12.) Similarly on October 5, 2012, William Hartman, the director of employee relations responded to the Union's October 5, 2012 request pertaining to Non-Boeing Labor and stated among other things that the requested, "data remains presumptively irrelevant to the current negotiations, and the Union still would be required to articulate a basis for the request." (GC Exh. 17.) Enclosed with the response was a matrix with information pertaining to contractors. The chart however did not contain information that was specifically requested by the Union including amounts paid to outside entities, compensation paid to employees by outside entities including any overtime and fringe benefits. (GC Exh. 18.)

Thereafter, on November 1, 2012, the Union sent an email asserting that despite signing the confidentiality agreement that Brenaman asserted was a prerequisite to Respondent complying with the request, and the Union's explanation of the relevance of the information sought, Respondent still had not provided information responsive to its requests. Specifically Respondent failed to provide information pertaining to "rates paid to non-Boeing personnel performing bargaining unit work." (GC Exh. 19, p. 2.)

On November 7, 2012, Respondent provided a chart which contained information regarding the hourly rates paid to contractors listing the minimum, average, and highest amounts paid. (GC Exh. 20.)[4] The chart however did not provide any information regarding contract house fees, overtime, or fringe benefits. (GC Exh. 20.)[5]

After receiving the chart, the Union's representative, Rich Plunkett contacted Brenaman by phone to discuss the information requests. Brenaman when questioned about information that

[3] Respondent's email provided a chart supporting its calculation which appears in the original email but was omitted. (See GC Exh. 11 p. 2.)

[4] The actual dollar amounts that appeared in the original exhibit were redacted to preserve the confidentiality of the information. (GC Exh. 20.)

[5] Counsel for the General Counsel conceded in its brief that only two items from the September 20, 2012 request remain at issue. The first being the Union's request for the amounts paid to outside entities and second, the compensation including overtime and fringe benefits paid to contractors. (See GC Br. at 28.)

still had not been provided told Plunkett, "what you've got is all you're going to get" (Tr. 140:18). Thereafter, no other information was received regarding either the September 11or 20, 2012 requests.

B. The Duty to Provide Information

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees." 29 U.S.C. § 158(a)(5). As the Board explained in *A-1 Door & Building Solutions,* 356 NLRB No. 76, slip op. at 2 (2011): An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiations and administration. See *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 152–153 (1956) [parallel citations omitted]. Generally, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. See *Southern California Gas Co.,* 344 NLRB 231, 235 (2005). By contrast, information concerning nonunit employees is not presumptively relevant; rather, relevance must be shown. *Shoppers Food Warehouse Corp.,* 315 NLRB 257, 259 (1994). The burden to show relevance, however, is "not exceptionally heavy," *Leland Stanford Junior University,* 262 NLRB 136, 139 (1982*),* enfd. 715 F.2d 473 (9th Cir. 1983); "[t]he Board uses a broad, discovery-type standard in determining relevance in information requests." *Shoppers Food Warehouse,* supra at 259.

Notably, once the burden of showing the relevance of nonunit information is satisfied, the duty to provide the information is the same as it is with presumptively relevant unit information. Depending on the circumstances and reasons for the union's interest, information that is not presumptively relevant may have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co. of America v. NLRB,* 412 F.2d 77, 84 (2d Cir.), cert. denied 396 U.S. 928 (1969). "[A]n employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.,* 346 NLRB 1159, 1159–1160 (2006). *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 152–153 (1956). As the Supreme Court explained in *Truitt,* when a party asserts its positions without permitting proof or independent verification, "[t]his is not collective bargaining." 351 U.S. at 153 (quoting *Pioneer Pearl button Co.,* 1 NLRB 837, 842–843 (1936)).

C. Relevance

1. The presumptively relevant information requests

The evidence of record establishes, and I find that some of the information requested by the Union was presumptively relevant. More specifically, I find that the request for information regarding "premiums" paid to engineering employees represented by the Union (September 11, 2012)-Item Number 2(a) and (b) were presumptively relevant as it directly related to wages paid unit employees. See *Maple View Manor, Inc*., 320 NLRB 1149 (1996).

2. The other relevant information requests

The discovery standard for relevance is construed "broadly to encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or

may be in the case." *Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351 (1978), *Hickman v. Taylor,* 329 U.S. 495, 51 (1947). Although not presumptively relevant, I find that items 1a, 1b, 1c, 3 b, 3d, 4b, and c of the September 11, 2012 request and items 1 and 3 of September 20, 2012, all relevant.

In this case, the Union sought the information because the Union wanted to know first and foremost the rationale underlying the statements made at the bargaining table and those attributed to Delaney in the news article. The question is whether the requests for the information satisfy the "broad, discovery-type standard" of relevance utilized by the Board. I find that they do. The information regarding calculations and explanation of productivity costs, engineering costs, and engineering overhead all directly relate to statements made at the bargaining table, and the news article statements attributed to Delany regarding the expense associated with the Union at Puget Sound and the inference that work would be sent elsewhere absent some agreement that contained costs. (Tr. 78:11–21, Tr. 70:11–18, 73:4–18, Tr. 69–70, Tr. 73). This information is directly relevant to the Union's evaluation and/or reevaluation of their bargaining position as it related to the fundamental and basic underlying contract wage issues.

Similar reasoning is applicable to the data and calculations showing how premiums are not paid at other facilities, projected changes in engineering costs for the next 3 years, a detailed statement of how the "premium" referenced at the bargaining table and attributed to Delaney in the news article is calculated, information regarding whether Respondent could sustain the rate of growth (referenced both in a memo to employees and the news article), along with information when rate of growth would become unsustainable. (GC Exh. 9.) I find that all these information requests are directly relevant to the Union's evaluation of its position regarding Respondent's claims that the Union's initial bargaining position would harm its competitiveness. The relevance of the information was generally explained by Plunkett who testified "[i]f we're going to price them out of business, we're out of work. So we needed to know what is this premium. And if no customer is going to pay, we need to understand that." (Tr. 90:10–16.)

So too, I find relevant the two September 20, 2012 information requests pertaining to the amounts paid to outside entities during the prior 4 years and compensation including overtime and fringe benefits paid to contractors for the last 4 years. This information was also directly relevant to underlying contractual wage issues that were at the heart of the negotiations between the parties. The information was relevant to the Union's evaluation of the overall "market rate" referenced by Respondent and whether the rate took into account rates being paid contract workers and those paid to a "contract house." (Tr. 104:10–20.) Mr. Plunket generally described the relevance stating, "we wanted to understand the market . . . and we're trying to understand the market to the greatest level of detail so we could structure a counter or have a dialogue about interests not simply I want to be x percent in the market." (Tr. 105:10–16.).

In sum, Respondent's proposal to reduce the annual wage growth percentage, its direct statements (and those attributed to Delany) directed at the Union's initial "status quo" proposal asserting that Boeing's costs would "balloon and it wouldn't be competitive" were a public invitation and/or warning to the Union to reevaluate its bargaining position. This triggered the Union's duty to evaluate in detail Respondent's statements to determine the accuracy of such statements and whether in fact their position required some alteration.

I further find that it is inherently contradictory for Respondent on the one hand to assert at the bargaining table and publicly that these matters are broadly relevant to bargaining and then during the litigation assert that these very matters have absolutely no relevance to the negotiations. I find that all of the information requests referenced above would have assisted the Union in assessing the accuracy of the Respondent's factual assertions and developing its own counterproposals. The record evidence unambiguously demonstrates that the Union's requests were made directly in response to specific assertions made by the Respondent while bargaining was ongoing.

D. The Failure to Provide Relevant Information.

The Union was entitled to all of the relevant information referenced above and I find that Respondent's refusal and/or failure to provide the information violated the Act. "The 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 191 (2012); *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). The failure to provide the information is in direct contravention to the fundamental objectives of the Act. "The objective of the disclosure [of requested information] obligation is to enable the parties to perform their statutory function responsibly and 'to promote an intelligent resolution of issues at an early stage and without industrial strife." *Clemson Bros.,* 290 NLRB 944, 944 fn. 5 (1988).

The Respondent's arguments to the contrary are unavailing. Respondent contends that it had no duty to provide the information because (1) "Boeing never claimed an inability to pay; (2) Boeing never put "engineering costs" at issue; (3) NBL costs and compensation is irrelevant to SPEEA employee compensation and (4) SPEEA did not need the information to perform its bargaining function."

1. Inability to pay

Respondent argues that it never claimed "inability to pay" and therefore the duty to provide information was never triggered. Respondent's assertions regarding "inability to pay" fall short. The Board in *Caldwell Mfg. Co.,* 346 NLRB 1159, 1160 (2006), openly rejected the notion that only assertions of "inability to pay" will trigger a duty to disclose information. The Board instead held that "when there has been a showing of relevance, the Board has consistently found a duty to provide information such as competitor data, labor costs, production costs, restructuring studies, income statements, and wage rates for nonunit employees." In *Caldwell*, the Board specifically held that "the General Counsel established that the information was relevant, because it would have assisted the Charging Party in assessing the accuracy of the Respondent's proposals and developing its own counterproposals. The record evidence demonstrates that the Charging Party's requests were made directly in response to specific factual assertions made by the Respondent in the course of bargaining." (Id. at 1160.) A similar result was reached in *KLB Industries, Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012), wherein the company sought wage concessions on the basis of competitive pressures it claimed to be facing. In *KLB,* the court reaffirmed the Board's holding that when the company relied on competitive pressures to justify wage concessions it "made the veracity of that claim relevant to the

negotiations." (Id. at 557.) The reasoning and rationale of *Caldwell* and *KLB* is particularly applicable to the facts of this case and directly addresses the very questions presented.

2. Respondent directly and indirectly put engineering costs in issue

Respondent's assertion that it never put "engineering costs" in issue ignores the plain and obvious statements attributed to Delaney, statements made at the bargaining table, and statements made by Brenaman in response to the information requests themselves. Unmistakably, the news article's plain focus was on "engineering costs." Wage rates are undoubtedly a part of what makes up "engineering costs." Brenaman, in his September 25, 2102 response to the Union's request for information regarding "engineering costs" stated, "**as the company has communicated consistently throughout the negotiation process**, wage rates in the Puget Sound are well above the national market (emphasis added)." (GC Exh. 11.) Brenaman's statement is a clear admission that "throughout the bargaining process" engineering costs were in fact "in issue."

Respondent further argues that the requests for information were "based upon the false premise derived from an inaccurate and unreliable news article." (R. Br. at 31.) Respondent further argues that the Bloomberg article was not "substantive evidence" and "unsubstantiated hearsay." (Id.)

The news article falls outside the definition of hearsay because it was never offered to prove the truth of the matters asserted therein. (Tr. 81.) See Fed. Rules of Evidence 801(c)(2). I also reject the underlying premise of Respondent's argument that somehow it was insulated from responding to the requests for information because the requests were partly triggered by quotes attributed to Boeing's VP of engineering and chief spokesperson for Boeing Commercial Airplanes (BCA). The article was published while negotiations were ongoing and specifically referred to the Union's proposal. The language used in the news article mirrored other statements made in bargaining. I find the totality of these to facts sufficient to trigger the Union's statutory duties and responsibilities. The information sought clearly had a bearing on the bargaining process and the Union had a reasonable belief supported by objective evidence i.e. a printed news article with statements attributed to the chief spokesperson for BCA requesting the information. See *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994).

Further, there is no evidence in the record from which to conclude that the news article was either inaccurate or unreliable. Delany was never called as a witness and no person who was called to testify called into question the accuracy or reliability of the article. Nor did any of Respondent's officials suggest during the various communications between the parties during bargaining that the news article was inaccurate or unreliable. There was no testimony or evidence offered which established that Delany, the chief spokesperson for BCA, was not authorized to speak on behalf of Boeing in his official capacity. There was also no evidence introduced which established that Boeing sought any retraction or correction from Bloomberg. Nevertheless, the information request was not predicated solely on the news article. The Union's request on September 12, 2012, on its face referenced both, "statements made at the bargaining table and to the media." (GC Exh. 8.)

3. Non Boeing Labor (NBL) costs and compensation was relevant.

Respondent's assertions that that NBL costs and compensation were irrelevant are also misplaced. The comparison of what others were paid is directly relevant to the Union's evaluation of the market rate of pay. This is especially true given the fact that Non-Boeing contract workers can perform the same work and in fact work side by side with bargaining unit employees. (Tr. 49:9–24.) As previously noted, wage rates and their comparison with what Boeing was characterizing as the "market rate" were matters that were at the heart of the negotiations and were directly relevant to bargaining.

E. Respondent Has No Legal Right to Unilaterally Decide What Information the Union Needs to Perform its Statutory Responsibilities.

Respondent's assertion that the Union did not need the information to perform its bargaining function also lacks merit. Respondent has no legal right to determine unilaterally what information the Union needs to engage in meaningful negotiations nor to unilaterally force the Union to rely upon the accuracy of its assertions without independent verification. The need for the information was directly triggered by the actions of Respondent and the assertions it made and/or were attributed to it in the news article. It was the Union's legal right and responsibility to assess and verify for itself the accuracy of the Respondent's claims in bargaining. *Shoppers Warehouse,* supra. As the Supreme Court noted in *Truitt,* supra, if "an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy." 351 U.S. at 152–153. The Supreme Court in *Truitt* recognized the right for independent verification noting that without permitting proof or independent verification, "[t]his is not collective bargaining." 351 U.S. at 153 (quoting *Pioneer Pearl Button Co.,* 1 NLRB at 842–843.

Respondent's Other Defenses

I reject the Respondent's other asserted defenses as being contrary to clearly established Board law. The Respondent's contention that the Union's information requests were made in bad faith is without any factual support. "[T]he presumption is that the union acts in good faith when it requests information from an employer until the contrary is shown." *Hawkins Construction Co.,* 285 NLRB 1313, 1314 (1987), enf. denied on other grounds, 857 F.2d 1224 (8th Cir. 1988); *International Paper Co.,* 319 NLRB 1253, 1266 (1995), enf. denied on other grounds, 115 F.3d 1045 (D.C. Cir. 1997). There is not a scintilla of evidence to support the assertion the Union acted in bad faith. In *Land Rover Redwood City,* 330 NLRB 331, 331–332 fn. 3 (1999), the Board held that "the requirement that an information request be made in good faith is satisfied if at least one reason for the demand can be justified." As was discussed above, the Union's requests were all relevant to the ongoing bargaining and therefore justified. Respondent asserted that the timing of the requests suggests that the real purpose behind the requests was to "delay-not facilitate-the negotiations." (R. Br. at 35.) I disagree, the timing of the requests were triggered by statements made at bargaining and those attributed to Delany and there was no showing to the contrary. Respondent also argues that the "sheer quantity of SPEEA's information requests established bad faith." (Id. at 36.) While it is clear that in some circumstances an overly burdensome request can constitute bad faith, the requests in this case simply do not fall within that category. I find that the requests were not overly burdensome or

"excessive" as characterized by Respondent. Rather, they were carefully and narrowly tailored and sought relevant information that was put in issue directly by Respondent.

Respondent's assertions of waiver similarly lack merit. Respondent can point to no evidence in the record (and there is none) which would support a finding that the Union relinquished its rights to the information sought. See *Clinchfield Coal Co*., 275 NLRB 1384 (1985). Nor has there been the requisite showing that the Union expressly waived its right to information. *NLRB v. Perkins Mach. Co*., 326 F.2d 488(1st Cir. 1964).

I also find Respondent's assertions that the subsequent reaching of a collective-bargaining agreement renders moot the Union's claims unpersuasive. Respondent's assertions ignore well-established Board precedent to the contrary. See *Lumber Mills Employers Assn's*, 265 NLRB 199, 204 (1982), enfd., 736 F.2d 507 (9th Cir. 1984), cert. denied, 469 U.S. 934 (1984).

F. The Practical Effects of the Failure to Provide Relevant Information

I find Respondent's failure to provide requested information undermined and tainted the bargaining process. "Collective bargaining is often described as a struggle of brute economic power between an employer and union. It is, but at the same time the Act regulates the process of that struggle by requiring good-faith bargaining that encourages reasoning, problem solving, and honest discussion. This reasoned side of the Act is essential if the Act's goal of industrial peace is to be furthered. There is a right to engage in knowledge-based bargaining where parties can verify each other's statements, and just as importantly, have information necessary to creatively search for solutions to the problems and differences that arise in collective bargaining." *National Extrusion & Mfg. Co.,* 357 NLRB No. 8 (2011). Respondent's actions in failing to provide the requested information deprived the Union of its right to engage in "knowledge based bargaining."

CONCLUSIONS OF LAW

1. The Respondent, The Boeing Company, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party the Society of Professional Engineering Employees in Aerospace, affiliated with International Federation of Professional and Technical Engineers, Local 2001 (Union) is a labor organization with the meaning of Section 2(5) of the Act.

3. At all material times the Union has been the designated exclusive collective-bargaining representative of the following bargaining units of Respondent's employees:

a) Professional Unit

> Professional employees, including but not limited to those working at [Respondent's] facilities in the State of Washington and the State of Oregon, as set forth in Appendix B of the Collective-Bargaining Agreement for the Professional Bargaining Units.

b) Technical Unit

Technical employees, including but not limited to those working at [Respondent's] facilities in the State of Washington and the State of Oregon, as set forth Article 1 and Appendix B of the Collective-Bargaining Agreement for the Technical Bargaining Units.

4. By failing and refusing to provide information requested by the Union and relevant to the Union's representational duties Respondent violated Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

The Respondent shall provide the Union with the information requested in paragraphs 1, 2, 3b and d, and 4 b and c of its September 11, 2012 request for information. Respondent shall also provide the Union with the information requested in paragraphs 1 and 3 (excluding the wage information previously provided) in its September 20, 2012 request for information.

To remedy the Respondent's unlawful failure to bargain in good faith with the Union, the Respondent shall be ordered to bargain in good faith with the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, [name, city, State], its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union as the representative of its employees in an appropriate bargaining unit by failing and refusing to provide information requested by the Union that is relevant and necessary to the Union's representational status.

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

[6] 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.

(a) In a timely manner, furnish the Union with the information requested by the Union in paragraphs 1, 2, 3b and d, and 4b and c of its September 11, 2012 request for information.

(b) In a timely manner, furnish the Union with the information requested by the Union in paragraphs 1 and 3 of its September 20, 2012 request for information (excluding the wage information previously provided referenced herein).

(c) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix."[7] 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. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 23, 2012.

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

Dated, Washington, D.C. July 31, 2014

Dickie Montemayor
Administrative Law Judge

7 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT fail to collectively bargain in good faith with the SPEEA, IFPTE LOCAL 2001 (the "Union"), by refusing and failing to provide the Union with requested information that is relevant and necessary to the performance of its duties as the collective-bargaining representative of our employees in the units as described in article 1 of the most recent collective-bargaining professional and technical agreements between the Union and us.

WE WILL provide the Union with the information it requested as set forth in paragraphs 1, 2, 3b and d, and 4b and c of its September 11, 2012 request for information; and in paragraphs 1 and 3 (other than wages which were provided on November 5, 2012) of its September 20, 2012 request for information.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

THE BOEING COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under

the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-093656 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.