American Medical Response West *and* United Emergency Medical Service Workers, AFSCME Local 4911, AFL–CIO. Cases 32–CA–147259 and 32–CA–149437

July 31, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS PEARCE AND MCFERRAN

On December 17, 2015, Administrative Law Judge Eleanor Laws issued the attached decision. The General Counsel filed limited exceptions and a supporting brief, which the Charging Party joined. In addition, the Charging Party filed cross-exceptions and a supporting brief. The Respondent filed answering briefs to the General Counsel's limited exceptions and the Charging Party's cross-exceptions, and the General Counsel 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, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order, to amend the conclusions of law and remedy, and to adopt the recommended Order as modified and set forth in full below.[2]

The issue before the Board in this proceeding arises from the Union's request for information related to the Respondent's investigation and discharge of employee Tracy Perkin. The judge found that the record contained responsive documents in the form of two emails from employees, dated December 25, 2014, that summarized their conversations with the employee whom Perkin purportedly harassed as well as the Respondent's witness interview notes, and that these documents were presumptively relevant to the Union's representational duties. The judge found that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with copies of the December 25 emails,[3] but that it did not violate the Act by providing the Union with redacted versions of its witness interview notes.[4] In his limited exceptions, the General Counsel contends that the judge erred by failing to consider whether the Respondent violated Section 8(a)(5) and (1) by refusing to provide the Union with the names of the witnesses interviewed in connection with its discharge of Perkin. As discussed below, we find merit in the General Counsel's exception.

I. FACTUAL BACKGROUND

The relevant facts are set forth more fully in the judge's decision. Briefly, the Respondent provides ambulance transportation and emergency medical services in Stockton, California. Pursuant to reports from other employees in late December 2014, the Respondent began investigating Field Training Officer Tracy Perkin, a bargaining unit member, for sexual harassment of a colleague. As part of its investigation, the Respondent interviewed Perkin and five other witnesses, including the colleague Perkin purportedly harassed. After completing the investigation, the Respondent discharged Perkin.

On January 27, 2015, Union Steward David Stephens filed a grievance over Perkin's discharge and requested information from the Respondent relating to its investigation into Perkin's conduct. As relevant here, in response, General Manager Barry Elzig provided the Un-

[1] The judge found that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to seek an accommodation with the Union regarding the Union's request for emails from, and notes of interviews with, witnesses who reported alleged misconduct by employees Craig Gardina and Richard Wadsworth. In the absence of exceptions, we adopt the judge's finding and recommended remedy.

[2] We shall amend the judge's conclusions of law and remedy in accordance with our findings herein. We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

[3] In the absence of exceptions, we adopt the judge's finding.

[4] The judge found that the Respondent's witness interview notes were protected witness statements exempt from an employer's general obligation to provide relevant requested information under *Anheuser-Busch, Inc.*, 237 NLRB 982, 984–985 (1978). Accordingly, the judge concluded that the Respondent did not violate the Act by providing the Union with a redacted copy of the statements. The sole exception to this finding is the Charging Party Union's assertion that the Board should apply *Piedmont Gardens*, 362 NLRB No. 139 (2015), enfd. on other grounds 858 F.3d 612 (D.C. Cir. 2017), to find a violation. In that case, the Board overruled *Anheuser-Busch*'s blanket exemption of witness statements from disclosure and held that, in future cases where an employer asserts a confidentiality interest in witness statements, the Board will apply the balancing test set forth in *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). In so doing, however, the Board stated that it would apply its new rule only prospectively and reiterated that *Anheuser-Busch* would continue to apply to all cases, such as the present case, where the employer's refusal to provide requested witness statements occurred before the date of the *Piedmont Gardens* decision. We thus find the Charging Party's exception without merit.

Chairman Ring agrees with his colleagues that the Charging Party's exception lacks merit. He observes that the Respondent could have lawfully refused to provide any portion of the witness statements at issue here. See, e.g., *Fleming Cos.*, 332 NLRB 1086, 1087 (2000). Chairman Ring notes that no party has asked the Board to overrule *Piedmont Gardens* in this case. He believes, however, that the concerns articulated by then-Members Miscimarra and Johnson in their dissenting opinions in *Piedmont Gardens*, above, 362 NLRB No. 139, slip op. at 8–18, warrant careful consideration, and he would be open to reconsidering *Piedmont Gardens* in a future appropriate case.

ion with a copy of Perkin's employee file, as well as copies of the Respondent's witness interview notes with all names redacted, except for that of the employee Perkin purportedly harassed. After receiving this information from the Respondent, Stephens informed Elzig that he considered it to be "incomplete" and stated that "the names of the[] witnesses are vital to our investigation as well." Specifically, Stephens informed Elzig that the names were necessary to the Union's decision whether to proceed to arbitration. In response, Elzig stated that the Respondent had an obligation to protect witnesses in an investigation and expressed concern about disclosing the names of bargaining-unit witnesses. Stephens informed Elzig that he would not disclose the names to anyone. In a subsequent meeting, Elzig reiterated that the Respondent had an obligation to protect the identity of witnesses it had interviewed. The Respondent did not provide the Union with the witness names. At no point did the Respondent offer to bargain over the refusal to provide names, nor did it offer an accommodation.

II. ANALYSIS

In analyzing the Respondent's obligation to provide relevant requested information to the Union about its investigation into Perkin's alleged misconduct, the judge did not address whether the Respondent acted lawfully in refusing to provide the Union with the names of the witnesses it interviewed during its investigation. Doing so here, we find that the Respondent violated Section 8(a)(5) and (1).

As an initial matter, we find without merit the Respondent's contentions that this issue is not properly before the Board for consideration because the Union did not request the names of the witnesses interviewed and because the General Counsel did not raise the matter to the judge. The record establishes that Union Steward Stephens requested from General Manager Elzig the names of the witnesses interviewed during the Respondent's investigation into Perkin's conduct. Specifically, Stephens informed Elzig that the names were "vital" to the Union's ability to process the Perkin grievance.

In addition, the General Counsel clearly argued to the judge that the Respondent acted unlawfully by failing to provide this information to the Union. The complaint relevantly alleges that the Union requested from the Respondent "the names of the witnesses who provided statements in connection with the Respondent's investigation" of Perkin and that the Respondent violated Section 8(a)(5) and (1) by failing to provide this information. Consistent with these complaint allegations, the General Counsel asserted before the judge that the Union had requested the names of the witnesses the Respondent interviewed as part of its investigation into Perkin's conduct and that the Respondent had an obligation to provide this information to the Union and failed to do so. Finally, in his posthearing brief to the judge, the General Counsel specifically argued that the Respondent acted unlawfully by failing to provide the Union with the names of the witnesses interviewed during its investigation of Perkin. Thus the issue clearly was raised to the judge. As she did not consider the matter, we properly do so here.

Turning to the merits of the allegation, Board law is clear that a union's request for witness names made in connection with a grievance constitutes a request for relevant and necessary information. See, e.g., *Transport of New Jersey*, 233 NLRB 694, 694–695 (1977).[5] Here, the record establishes that the Union requested the witnesses' names as part of its representational duties and for the purpose of determining whether to pursue the Perkin grievance to arbitration. For its part, the Respondent does not dispute that the witness names are relevant and necessary to the Union's processing of the Perkin grievance. As a result, the Respondent had an obligation under Section 8(a)(5) and (1) to provide the names to the Union unless it could establish a valid defense for not doing so.

The Respondent has not specifically argued a confidentiality defense to the Board, either in exceptions or in its answering brief to the General Counsel's exceptions, and we therefore find that the Respondent has waived this defense.[6] Nevertheless, we observe that: (1) at earlier stages of this proceeding, the Respondent asserted that it needed to maintain confidentiality during the Perkin investigation; and (2) the Respondent at least has mentioned this confidentiality interest in the facts section of

[5] Chairman Ring agrees that an employer generally must provide, upon request, the names of witnesses to an incident at issue in a grievance or potential grievance to the extent the employer knows them. However, he would carve out exceptions to this obligation on a case-by-case basis where an overriding confidentiality interest is implicated, such as when a witness observed surreptitious illegal activity. See *Piedmont Gardens*, above, 362 NLRB No. 139, slip op. at 10 fn. 13 (Member Miscimarra, dissenting in part). Although the Chairman believes that employee-witnesses and employers also generally have a significant confidentiality interest where the allegation of employee misconduct involves workplace harassment, he agrees that the Respondent had an obligation to disclose the names of employee witnesses under the circumstances presented here.

[6] See Sec. 102.46(a)(1)(ii) and (f) of the Board's Rules and Regulations ("Any exception . . . not specifically urged will be deemed to have been waived," and "[m]atters not included in exceptions . . . may not thereafter be urged before the Board, or in any further proceeding.").

Chairman Ring concurs in finding that the Respondent waived its confidentiality defense in the circumstances presented here, where the issue of its failure to provide the names of the witnesses was clearly raised to the judge, the confidentiality defense was an issue as to which it had the burden of proof, and the Respondent nevertheless did not argue that defense in exceptions or its answering brief.

its answering brief. In the event that a reviewing court reads the Respondent's arguments more expansively than we do, we address the defense.

The record reflects that in discussing the Union's information request, General Manager Elzig informed Union Steward Stephens that the Respondent had an obligation to protect the witnesses' identities. Human Resources Manager Keri Limpin testified that some of the witnesses expressed concern about coming forward to discuss the Perkin matter with the Respondent and that she assured them that she would keep their involvement confidential.[7] In his brief in support of the limited exceptions, the General Counsel acknowledges the Respondent's confidentiality assertions, but argues that, under *Detroit Edison*, above, 440 U.S. at 318–320, the Respondent has failed to establish any legitimate and substantial confidentiality interest that would outweigh the Union's need for the information.

For purposes of this discussion, we assume that the Respondent's desire to protect the identity of witnesses involved in its investigation of Perkin's alleged sexual harassment constitutes a legitimate and substantial confidentiality interest. Accordingly, under *Detroit Edison*, we must balance the Union's need for the witnesses' names against the Respondent's interests in keeping those names confidential. See *Detroit Edison*, above, 440 U.S. at 318–320. In so doing, we note that the Respondent bears the burden of proving that its interest outweighs the Union's need for the information. See, e.g., *Menorah Medical Center*, 362 NLRB No. 193, slip op. at 4 (2015), enfd. in rel. part 867 F.3d 1288 (D.C. Cir. 2017). For the reasons explained below, we find that the Respondent has not carried that burden.

As discussed above, the Union sought the witness names in furtherance of its efficient processing of Perkin's grievance. Specifically, the Union needed the names so that it could conduct its own investigation as to whether Perkin's discharge had merit and decide whether to pursue the grievance to arbitration. The Union thus had a clear need for the requested information. Cf. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 438 (1967) ("Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims.").

In contrast, the Respondent has presented no evidence or argument to the Board to explain why its confidentiality interests should prevail over the Union's need for the information. Even considering Limpin's assertions at the hearing that some of the witnesses expressed concern about harassment from or retaliation by the Union or Perkin, the Respondent failed to establish that there was a reasonable expectation that disclosure of the witnesses' names would lead to such activity. There is no evidence that Union Steward Stephens or any union official had a history of threatening, intimidating, or retaliating against employees for serving as a witness in a disciplinary investigation or that the Union sought the witnesses' names here to do so.[8] In fact, Stephens acknowledged Elzig's concern for protecting the witnesses' identities and assured Elzig that he would not disclose the names to anyone.[9] Further, although according to Limpin one witness apparently feared that Perkin would retaliate against him on the job, the Respondent presented no evidence that such retaliatory conduct was "a likelihood or real risk." See *Metropolitan Edison Co.*, 330 NLRB 107, 108 (1999) (respondent's asserted concerns about harassment or retaliation insufficient to support flat refusal to supply relevant information where the record was devoid of evidence to indicate a likelihood or real risk of retaliation or violence, and the respondent presented only a mere possibility of such conduct occurring); see also *New England Telephone Co.*, 309 NLRB 196, 196 (1992).

On balance, then, even if the Respondent's previously asserted confidentiality concern may be considered now, we would find that the Respondent has failed to meet its burden of proving that its interest in keeping the witness names confidential outweighs the Union's need for the information.[10] Thus, we find that the Respondent violat-

[7] It is unclear from the record whether the assurances of confidentiality were provided contemporaneously with the witness interviews or sometime thereafter. In addition, the record reflects that at least one of the witnesses only expressed confidentiality concerns after being approached by a management official about the investigation.

[8] In discussing the Union's request for emails related to the Perkin investigation, the judge noted the Respondent's assertion that Stephens had made one of the witnesses feel uncomfortable during a phone call to discuss the investigation. The judge found, however, that this was not sufficient to establish a reasonable likelihood of harassment or retaliatory conduct, and thus that the Respondent failed to meet its burden under *Detroit Edison* of proving that its confidentiality interests in the emails outweighed the Union's need for them. The Respondent does not except to this finding.

[9] The Union also initially requested names of non-employee witnesses interviewed by the Respondent. The record is unclear whether the Respondent interviewed any non-employee witnesses. In any event, the Respondent does not explain why non-employee witnesses would fear harassment or retaliation from a union with which they have no relationship.

[10] We further note that even assuming the Respondent had demonstrated that its confidentiality interests in protecting the witness names outweighed the Union's need for the information, it would have nonetheless violated Sec. 8(a)(5) and (1) by failing to seek an accommodation. When an employer demonstrates a substantial confidentiality interest, it cannot simply ignore the Union's request for information. It must still seek an accommodation of its concerns and the Union's need for the requested information. See *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004) (citing *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 21 (D.C. Cir. 1998)). The Respondent failed to do so here.

ed Section 8(a)(5) and (1) by failing to furnish the Union with the names of witnesses it interviewed in connection with its investigation and discharge of Perkin.[11]

AMENDED CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to provide non-confidential information requested by the Union and by failing to seek an accommodation with the Union regarding confidential information, the Respondent has violated Section 8(a)(5) and (1) of the Act.

4. By failing and refusing to furnish information requested by the Union that is relevant to and necessary for the performance of the Union's duties as exclusive representative of the Respondent's bargaining unit employees, the Respondent has violated Section 8(a)(5) and (1) of the Act.

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

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist from engaging in such conduct and to take certain steps to effectuate the policies of the Act.

In addition to the remedies provided for in the judge's decision, we shall order the Respondent to furnish the Union with the names of the witnesses it interviewed in connection with its investigation and discharge of employee Tracy Perkin.

ORDER

The National Labor Relations Board orders that the Respondent, American Medical Response West, Stockton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully refusing to bargain collectively with United Emergency Medical Service Workers, AFSCME Local 4911, AFL–CIO (the Union) by failing to provide it with the December 25, 2014 emails used in the Tracy Perkin investigation**.**

(b) Unlawfully refusing to provide the Union with the names of the witnesses interviewed during the Perkin investigation.

(c) Unlawfully failing to seek an accommodation with the Union regarding the witness statements and the emails from witnesses in the Craig Gardina and Richard Wadsworth investigations.

(d) 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 December 25, 2014 emails related to the Perkin investigation.

(b) Furnish to the Union in a timely manner the names of the witnesses interviewed during the Perkin investigation.

(c) Bargain with the Union toward an accommodation that satisfies both the Union's needs and the Respondent's confidentiality concern regarding the Union's request for witness statements and emails from witnesses obtained by the Respondent during its investigation into the Gardina and Wadsworth matters.

(d) Within 14 days after service by the Region, post at its Stockton, California facility copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 32, 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, 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. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 27, 2015.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certifi-

[11] Our decision is limited to the Respondent's obligation to provide the names of witnesses to Perkin's purported misconduct. Contrary to the Respondent's contention, we are not requiring it to turn over the unredacted witness statements that were originally requested by the Union.

[12] 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."

cation of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 31, 2018

John F. Ring, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) 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 unlawfully refuse to bargain collectively with United Emergency Medical Service Workers, AFSCME Local 4911, AFL–CIO (the Union) by failing to provide it with the December 25, 2014 emails used in the Tracy Perkin investigation.

WE WILL NOT unlawfully refuse to provide the Union with the names of the witnesses interviewed during the Perkin investigation.

WE WILL NOT unlawfully fail to seek an accommodation with the Union regarding the witness statements and the emails from the witnesses in the Craig Gardina and Richard Wadsworth investigations.

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 December 25, 2014 emails related to the Perkin investigation.

WE WILL furnish to the Union in a timely manner the names of witnesses interviewed during the Perkin investigation.

WE WILL bargain an accommodation with the Union regarding its request for witness statements and emails from witnesses obtained by the Respondent during its investigation into the Gardina and Wadsworth matters and thereafter comply with any agreement reached through such bargaining.

AMERICAN MEDICAL RESPONSE WEST

The Board's decision can be found at www.nlrb.gov/case/32-CA-147259 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.

Emily Erdman, Esq. and *Noah Garber, Esq.*, for the General Counsel.

Daniel Fears, Esq. (Payne & Fears), for the Respondent.

Alejandro Delgado, Esq., Manuel Boigues, Esq., and *David Rosenfeld, Esq, (Weinberg, Roger, and Rosenfeld),* for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Oakland, California, on October 14, 2014. The United Emergency Medical Service Workers-AFSCME Local 49-1-1, AFL-CIO (Charging Party or Union) filed the charge in Case 32–CA–147259 on February 27, 2015, and filed the charge in Case 32–CA–149437 on April 2, 2015.[1] The General Counsel consolidated the cases and issued the complaint on July 30, 2015. American Medical Response West (the Respondent or AMR) filed a timely answer. On September 25, 2015, the Gen-

[1] All dates are in 2015 unless otherwise noted.

eral Counsel amended the complaint. As agreed upon by the parties during a prehearing conference, the Respondent answered the complaint on the record at the hearing.

The complaint alleges the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) when it failed to provide information or seek accommodation on requests for information from the Union concerning the terminations of three bargaining-unit employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Charging Party, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Stockton, California, is engaged in the business of providing ambulance transport services. In conducting its business during the relevant time period, it performed services valued in excess of $50,000 outside the State of California. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

This case concerns AMR's operations in Stockton, California. Ambulance transportation services are provided by AMR's emergency medical technicians (EMTs), paramedics, and nurses. New paramedics are paired with field training officers (FTOs) who provide them with on-the-job instruction. FTOs provide input into whether new paramedics are promoted.

The Respondent and the Union are parties to a collective-bargaining agreement. The Union represents approximately 250–300 employees in Stockton in the following bargaining unit:

> All employees performing work described in and covered by "Article 1-Recognition" of the January 1, 2015 through June 30, 2018 collective-bargaining agreement between the Union and the Respondent (the Agreement); excluding all other employees, guards, and supervisors as defined in the Act.

Keri Limpin (Limpin) is the Respondent's human resources manager. David Stephens (Stephens), a paramedic for AMR, serves as the Union's chief shop steward for San Joaquin County, and is on the Union's executive board of directors. David Hamric (Hamric), also a paramedic and field training officer (FTO) for AMR, is a shop steward and assistant chief with the Union.

B. Information Request for Tracy Perkin

The Respondent has a zero tolerance policy regarding sexual harassment.

In late December 2014, Limpin received a call from a supervisor regarding a conversation that had occurred at the Respondent's Christmas party, which took place on December 20, 2014. The supervisor talked to an employee who shared a conversation he'd had with employee Tessa Malinowski (Malinowski) about potential sexual harassment by FTO Tracy Perkin (Perkin). On December 25, 2014, Emergency Medical Services Captain Steve Riley forwarded Limpin two emails he received from employees that day summarizing their conversations with Malinowski. (GC Exh. 4, pp. 5–8.)[2]

Limpin conducted an investigation, which involved interviewing Malinowski, Perkin, and four other individuals. Her practice when conducting investigations is to let the interviewee know she will be taking notes. After the interview is finished, she prints out her notes and permits the interviewee to review the notes and make any changes. She asks the interview to initial each page and sign the notes.

The notes of each interview Limpin conducted start as follows: "KL–reviewed confidentiality, retaliation, and the importance of being truthful during the investigation." Limpin spoke with Malinowski, who reported that Perkin had pulled her hair, smacked her on the bottom, and said, "Here blondie, here's your computer."

Two of the employees Limpin interviewed expressed fear of retaliation from the Union if they came forward, and asked if they could talk to Limpin confidentially. Limpin told them she would maintain confidentiality, and would not release her notes unless she was forced. One of the employees was new, and Perkin was his FTO. He expressed concern that he would not pass his training if he came forward and reported Perkin and said did not want to make any waves.

Perkin was placed on administrative leave on January 23, 2015, pending investigation into allegations he "smacked" Malinowski on the buttocks and pulled her hair. During an investigatory interview that same day, Perkin admitted "swatting" his female partner on the buttocks with a clipboard while serving as her partner and FTO on December 18, 2014. He was terminated for inappropriate conduct, effective January 27, 2015.[3] (GC Exh. 2.)

The Union filed a grievance on January 27, accompanied by the following request for information:

> We request any and all information including but not limited to investigations conducted by AMR with all employees including notes, electronic, handwritten or otherwise. Any video, audio recordings. a list of persons that were interviewed not being AMR employee's including all records and notes of the meetings electronic, handwritten or (sic) other wise. How non AMR employees were contacted. Chain of events itemized with span of control on how AMR was informed and the chain of events leading to termination. A hard physical copy Tracy Perkin employee file including but not limited to all training and compliance pertaining to subject of discharge

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "R Exh." for the Respondent's exhibit; "GC Exh." for the General Counsel's exhibit. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

[3] Perkin had a prior discipline in his file for unprofessional conduct with a female coworker.

> along with all discipline records. All information pertaining to the interview and the investigation process of Tracy Perkin discharge.

(GC Exh. 3.)

About a week later, General Manager Barry Elzig (Elzig) told Stephens the responsive information was in the supervisors' office in a box with Stephens' name on it. Stephens picked up the information, which included Perkin's employee file and investigation notes with all names redacted except for Malinowski's. (GC Exh. 4.)

Stephens did not find the redacted witness statements sufficient to determine whether to take the Perkin grievance to arbitration. A series of emails between Stephens and Elzig took place on February 5. Stephens expressed his belief that the information provided was incomplete, and stated that the Union had the right to conduct its own investigation, including interviewing witnesses. Elzig responded, stating the employer has an obligation to protect witnesses in investigations. Stephens replied, reiterating the Union's need for the information to determine whether the termination had merit and warranted proceeding to arbitration. In response to concerns Elzig expressed about disclosing the names of bargaining-unit witnesses, Stephens stated he would not disclose witness names to anyone. (GC Exh. 5.)

On February 6, Stephens and Elzig met in Elzig's office. Elzig explained that the employer had an obligation to protect the identity of the witnesses from whom they had obtained statements. Elzig did not offer to bargain over the refusal to provide witness names, nor did he offer an accommodation.

Stephens attempted to speak to Malinowski about the incident leading to Perkin's termination by calling her approximately three times in January and February 2015. The first time Stephens spoke with Malinowski he told her she was not required to talk to him, and he could arrange a meeting with Elzig in attendance if that would make her more comfortable. Malinowski said she would think it over and get back to him. Stephens then left a voicemail for Malinowski. He called her again, and she said she did not want to discuss the matter.

On February 14, Office Manager Michelle Tomscak (Tomscak) sent Limpin an email describing a conversation she had with Malinowski, during which Malinowski had reported feeling pressured by Stephens to provide information about her allegations. According to Tomscak's report, Stephens told Malinowski that if this went to arbitration, she would be subpoenaed, and the other statements contradicted her statement. (R. Exh. 5.)

Malinowski sent Limpin an email on February 25 describing her conversation with Stephens. Malinowski said she returned Stephens' call on February 13, and told him she was uncomfortable discussing the incident involving Perkin. Stephens told her that during arbitration she would be forced to discuss it, and informed her that reports given about the event were contradictory. Malinowski perceived the conversation as a thinly veiled threat of legal action against her and felt she was being called a liar. (R. Exh. 6.)

Perkin and Stephens attended a level 1 grievance meeting in Steve Riley's office the 2nd or 3rd week in February. Stephens said he thought termination was excessive and said he may have had more to add if the Respondent had provided the information the Union requested. Riley did not offer to bargain over the refusal to provide witness names or offer an accommodation. The level 1 grievance was denied.

Stephens again requested non-redacted notes from witness interviews in emails to Limpin on February 19 and 24. Limpin responded, stating that the Company had provided the requested information and considered the matter closed. (GC Exhs. 6–7.)

On February 23, Stephens received an incident report stating an employee had accused him of acting in a harassing manner. Stephens understood the employee in question was Malinowski. Stephens responded, stating that he did not engage in any harassment, and even informed the employee (Malinowski) she did not have to speak with him if she did not want to. (R Exhs. 1–2.) No further action was taken.

On February 25, an employee emailed Limpin expressing a desire not to have his or her name given out for the investigation. On February 26, another employee emailed Limpin stating he or she was approached by Michelle Tomscak about the release of names attached to Perkin's incident report. The employee stated, "I do not wish to have my name released not only for confidentiality but to avoid possible retaliation as well." (R Exh. 8.)

At the time of the hearing, Perkin's grievance had been approved by the arbitration board and was awaiting scheduling. The Union is unaware of any documents that exist but have not been provided, other than non-redacted witness statements.

C. Information Requests for Craig Gardina and Richard Wadsworth

AMR has a policy prohibiting employees from bringing firearms to the work premises. Violation of this policy is grounds for immediate termination. (Tr. 156.)

On January 21, an employee, using an alternate email address, sent an email to Jennifer Bales, safety risk manager, asking what would happen to employees who brought firearms to work, and what protection would be given to an individual who reported them. The employee said he feared for his life and the lives of his family members, and if he could not be assured protection, he could not report these individuals. Bales and the employee exchanged a couple more emails about the how to proceed with the matter, and on the evening of January 23, the employee came forward with the names of the employees, Craig Gardina and Richard Wadsworth.[4] (R. Exh. 3.)

Elzig and Limpin, along with supervisors Rob Hennin and Mike Robinson, decided to go to the station during Gardina and Wadsworth's next scheduled shift, Sunday January 25, to search for weapons. They asked Wadsworth if he had weapons on the premises or if he even brought weapons to work, and he said no. Upon a search of Wadsworth's backpack, Elzig felt the handle of a firearm. Law enforcement was called, and Officer Jesus Gonzalez from the Stockton Police Department

[4] The employee eventually forwarded the email exchange to Limpin on February 11. Both Gardina and Wadsworth have permits to carry concealed weapons.

inspected the gun and determined it was a black 9mm Glock, model 26, subcompact, semi-automatic pistol with a 10–round magazine inserted. He ejected the magazine which was loaded with 10 rounds, but did not have a round in the chamber. Wadsworth said he had forgotten the firearm was in his backpack. The police removed the gun from the premises. (GC Exh. 13.)

The same individuals asked Gardina whether he had a weapon on the premises. He denied having it in his locker, and said that if he brought it, he would keep it in his car. Limpin asked Gardina to show them his car. He refused and asked for a shop steward. Gardina would have permitted a search of his car if a shop steward had been present.

On January 25, Wadsworth was placed on administrative leave pending the results of investigation into the allegation that he brought a firearm to work and stored it in his backpack and/or locker and carried a firearm on an ambulance while on duty. He was terminated on February 13 for bringing a firearm to work. (GC Exh. 9.)

On January 25, Gardina was placed on administrative leave pending the results of investigation into the allegation that he brought a firearm to work and stored it in his backpack and/or locker while on duty. Gardina's termination notice states that he admitted to telling multiple members of management he brought his firearms to work and stored them in his car, but he denied this at his investigative interview.[5] He was terminated on February 13 for bringing a firearm to work. (GC Exh. 8.)

On February 4, Limpin conducted an interview with the witness who reported Gardina and Wadsworth. She assured him she would keep his identity confidential, and would only release it if she was forced. (R. Exh. 4; Tr. 158.)

In early February, Hamric and Jeffrey Misner, a labor representative from the Union, participated in telephonic investigatory interviews regarding Gardina and Wadsworth. For each employee's interview, Tomscak and Mary Kennedy, manager of the critical care transport division, were present for the Respondent. Misner asked if Gardina or Wadsworth had threatened violence, and was told they had not.

Hamric filed grievances over both terminations on February 26. The grievances contained requests for "[a]ny and all IR's [investigative reports], documents, statements, emails, video, audio or other items used in the decision to terminate" Gardina and Wadsworth. (GC Exhs. 10–11.) The Respondent provided copies of the employees' respective termination letters and employee files, along with some emails not pertaining to the terminations.

On March 5, Hamric emailed Limpin stating that the Union found the information the Company provided to be incomplete, and making a second request for the information. (GC Exh. 12.) He again requested the information in an email to Limpin on March 14, stating he needed it to proceed to level 2 of the grievance process. Jeffery Misner requested the documents from Elzig on March 16. Elzig informed Hamric that the Company had produced everything it was going to produce for Gardina and Wadsworth's level 2 grievances. He asked Misner to call him. (GC Exh. 14.)

That same day, March 16, Misner called Elzig, who said the all the information the Union had requested in the Wadswoth/Gardina matter had been provided. Misner said information with the names redacted would be acceptable to him. Elzig said the individual who made the allegation feared for his life if his name was disclosed. Misner assured Elzig there would be no threats from Gardina or Wadsworth. (GC Exh. 15.)

Later that day, Limpin provided Misner a copy of the police report from the incident regarding Wadsworth's firearm. (GC Exh. 13.)

The level 2 grievance meetings for Gardina and Wadsworth took place in April. Hamric and Misner were there with each employee for his meeting. Theresa Foletta, a human resources specialist, was present for the Respondent. Misner informed Foletta that the meeting would be short because he did not have the information he had requested.

At the time of the hearing, both Gardina and Wadsworth's grievances were awaiting arbitration.

The Respondent did not tell Hamric or Misner certain information did not exist or offer the Union an accommodation. Limpin is unaware of any audios, videos, investigative reports, or witness statements that were not produced. She considered providing a redacted witness statement, but after looking at it, she determined there would be nothing left after the redactions.

Limpin has never received complaints that Gardina or Wadsworth threatened anyone on the job.

III. DECISION AND ANALYSIS

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. As part of the obligation to bargain in good faith, both sides must furnish relevant information upon request. *NLRB v. Acme Indus. Co.*, 385 U.S. 432 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). It is well settled that an employer must provide information relevant to a union's decision to file or process grievances. See *Beth Abraham Health Services*, 332 NLRB 1234 (2000); *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). If the information sought relates to the processing of a grievance, (or potential grievance), the legal test is whether the information is relevant to the grievance and the determination of relevancy is made based on a liberal, discovery type of standard. *Acme*, 385 U.S. at 437; *Knappton Maritime Corp.*, 292 NLRB 236 (1988). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002).

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed "so intrinsic to the core of the employer-employee relationship" as to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes legitimate affirmative defenses to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000).

[5] He also denied it when he testified at the hearing.

There is no dispute the information requested concerns bargaining-unit employees and the processing of grievances, and is therefore presumptively relevant. The Respondent contends, however, that some of the documents requested are witness statements and/or confidential information protected from disclosure. The Respondent also asserts it has a legitimate interest in protecting the identities of the witnesses who provided statements, and therefore it need not provide information that would reveal these witnesses' identities. As the Party asserting the claim of confidentiality, the Respondent bears the burden of proof. *Washington Gas Light Co*., 273 NLRB 116 (1984).

In *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978), the Board created a rule exempting witness statements from an employer's general obligation to comply with union requests for information. In *Piedmont Gardens*, 362 NLRB No. 139 (2015), the Board overruled *Anheuser-Busch*, but held its decision would only apply prospectively. Because the underlying facts in the instant case occurred before *Piedmont Gardens*, the following rationale set forth in *Anheuser-Busch* applies:

> We, of course, recognize and continue to adhere to the *Acme* principle that Section 8(a)(5) of the Act imposes on an employer the "general obligation" to furnish a union, upon request, information relevant and necessary to the proper performance of its duties as bargaining representative. Witness statements, however, are fundamentally different from the types of information contemplated in *Acme*, and disclosure of witness statements involves critical considerations which do not apply to requests for other types of information. We do not believe that the principle set forth in *Acme* and related cases dealing with the statutory obligation to furnish information may properly be extended so as to require an employer to provide a union with statements obtained during the course of an employer's investigation of employee misconduct.

[Footnote omitted.] To fall within this protection, the statement must be adopted by the witness making it and there must be assurances to the witness that the statement will remain confidential. See *New Jersey Bell Telephone Co*., 300 NLRB 42, 43 (1990); *El Paso Electric Company*, 355 NLRB 428 (2010).

Even if requested information does not fall into the category of witness statements under *Anheuser Busch*, an employer may assert a confidentiality defense. In considering union requests for relevant but assertedly confidential information, the Board balances the union's need for the information against the employer's "legitimate and substantial" confidentiality interests. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). The Board has defined confidential information, which could in certain circumstances give rise to a valid confidentiality claim, justifying refusal to turn over information as follows:

> Confidential information is limited to a few general categories: that which would reveal, contrary to promises or reasonable expectations, highly personal information, such as individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits.

Detroit Newspaper Agency, 317 NLRB 1071, 1073 (1995).

"The confidentiality interest of the employer … is not fixed; it may vary with the nature of the industry or the circumstances of a particular case." *Resorts International v. NLRB*, 996 F.2d 1553, 1556 (3d Cir. 1993); Compare *Metropolitan Edison Co.*, 330 NLRB 107 (1999) (concerns about petty cafeteria theft do not carry "unusually great weight"); *Pennsylvania Power Co*., 301 NLRB 1104 (1991) and *Mobil Oil Corp*., 303 NLRB 780 (1991) (concerns about drug use of employees whose jobs were related to safety justified withholding of informants' names).[6]

The party asserting the confidentiality defense may not simply refuse to furnish the requested information, but must raise its confidentiality concerns in a timely manner and seek an accommodation from the other party. *Detroit Newspaper*, supra at 1072; *Metropolitan Edison*, supra.

A. Tracy Perkin

Complaint paragraphs 7 and 9 allege that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide and/or to timely provide the Union with the names of the witnesses who provided statements in connection with the Respondent's investigation that led to Perkin's termination.

The record contains documents in the form of emails and witness interview notes. I will turn first to the two emails dated December 25, 2014.[7] One of the emails from an unidentified employee to Riley describes what Malinowski had shared with that employee at the company's Christmas Party about her encounter with Perkin. (GC Exh. 4, pp. 6–7.) There is no evidence that the email was solicited with assurances of confidentiality. The same holds true for another December 25 email to Riley. (GC Exh. 4, p. 8.) The unidentified author of the email indicated he was passing along the information based on his belief he was required to do so pursuant to a recent training. There is nothing in the email to suggest he had been assured confidentiality, requested confidentiality, or expected confidentiality. Likewise, Riley's email to Limpin and Elzig about his conversation with one of the individuals does not show he assured confidentiality or that the witness requested it. (GC Exh. 4, p. 5.)

Moreover, one of the individuals Malinowski talked to at the Christmas party about the incident with Perkin expressed a willingness to come forward, dispelling the notion that there was significant concern about retribution from Perkin or the Union. A witness interview by Limpin reveals the following:

> Last week I was working with [name redacted]. Tess was there with her partner. She asked me if I came in to HR and if they've talked to me about spanking her on the butt. She told me the story that she told her friend at the Christmas party

[6] The parties cite to *Alcan Rolled Products*, 358 NLRB 37 (2012). This decision was rendered invalid by *NLRB v. Noel Canning, a Division of the Noel Corp*., 134 S.Ct. 2550 (2014), and I do not rely on it to support my findings.

[7] I find the emails are encompassed in the request for "[a]ll information pertaining to the interview and the investigation process of Tracy Perkin discharge."

> about him doing this and that he told her if she didn't say anything I will.

(R Exh. 4, p. 4.) The witness referenced in this exchange apparently was not reluctant to come forward.

The only evidence the Respondent presented that arguably might relate to confidentiality of these emails consists of emails from two employees to Limpin 2 months later, on February 25 and 26, 2015, respectively, requesting confidentiality. (R Exh. 8.) Of course, with the names redacted, there is no way to tell if these February emails to Limpin are from the same witnesses who emailed Riley on December 25. In any event, it is clear any assurances of confidentiality must be provided at the time of the statement for it to be protected under *Anheuser Busch*.

Because the December 25 emails to Riley were not protected witness statements under *Anheuser Busch*, I must apply the *Detroit Edison* balancing test to determine whether the Respondent has met its burden to prove it was entitled to keep the identity of the emails' authors confidential.

The first consideration is the Union's need for the identity of the individuals who emailed Riley. I find the Union has established the identity of the emails' authors was relevant to its representational function in the Perkin matter. The Respondent contends that because Perkin admitted "swatting" Malinowski with his clipboard, his termination was warranted regardless of any other information the witnesses might provide. I find this contention assumes an overly simplistic view of the Union's representational function. It is not a foregone conclusion that all employees who have engaged in conduct similar to Perkin's admitted conduct have been terminated for it.[8] The Union has a right to explore the precise nature and extent of what Malinowski reported to others about the incident to try to ascertain what actually occurred and to make credibility assessments. Moreover, as the Board (quoting the judge) noted in *Pennsylvania Power*, supra at 1106, '"[t]he accusation is what set the entire machinery in motion. Without it there would be no interview, no test, no suspension, and no discharge."

The Respondent contends that its confidentiality interests outweigh the Union's need for the information. Specifically, the Respondent contends that confidentiality is required in order to encourage employees to report sexual harassment. As noted above, one of the employees was intent on coming forward before any assurances of confidentiality were requested or provided. The Respondent did not present evidence that either of the employees who emailed Riley on December 25 required confidentiality assurances in order to report concerns of sexual harassment.

The Respondent asserts the employees feared retaliation from the Union.[9] The Board has found that identifying information can raise a legitimate and substantial confidentiality interest if its disclosure "could reasonably be expected to lead to harassment or retaliation." *Detroit Newspaper Agency*, supra at 1073. To show that such expectation is reasonable, the party asserting confidentiality must offer evidence indicating "a likelihood or real risk" of harassing or retaliatory conduct; "a mere possibility does not suffice." *Metro Edison*, supra. The only evidence to support the Respondent's position is Malinowski's report about a phone call from Stephens that made her feel uncomfortable. This only occurred after the Respondent's investigation into Perkin had concluded and after he had already been terminated. Admittedly, when Malinowski told Stephens she did not want to talk to him, he did not attempt to contact her again. No evidence was presented that Malinowski shared her conversation with Stephen with the witnesses, or that Stephen or any other union official had a history of retaliating against individuals who reported sexual harassment.

Based on the foregoing, I find the Respondent has not met its burden to prove the authors of the email reasonably feared retaliation from the Union.

Even if the Respondent has asserted a legitimate and substantial confidentiality interest, I find it was not so substantial as to justify its "blanket refusal to provide any information in response to the request for informants' names." *Metro Edison Co.*, supra. The Respondent had an obligation to come forward with an offer to accommodate both its concerns and the Union's legitimate needs for relevant information. As stated in *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20–21 (D.C. Cir. 1998):

> [I]t has long been established that an employer has the burden of seeking to accommodate the union's request for relevant information consistent with other interests rightfully to be protected. An employer is not relieved of its obligation to turn over relevant information simply by invoking concerns about confidentiality, but must offer to accommodate both its concerns and its bargaining obligations, as is often done by making an offer to release information conditionally or by placing restrictions on the use of that information. [Citations omitted.]

There is no evidence of such an offer here.

With regard to the notes from the witness interviews, I find they fall into the *Anheuser Busch* category of witness statements. Limpin provided unrefuted testimony that the witnesses expressed concern about retaliation, and she assured each of the individuals she interviewed that their statements would be confidential. The witnesses initialed each page of their respective statements, indicating they adopted their statements. The General Counsel contends that witness statements should be strictly limited to verbatim transcripts or a close approximation, and that the statement must bear the witness's signature. The Board in *New Jersey Bell Telephone*, however, noted that there is no requirement that "a statement be formally adopted or set forth in any particular manner in order to come within the witness statement exception." When a statement is withheld, or as here partially withheld, the employer must accommodate the Union by providing a summary of the statement. *Pennsylvania Power Co.* supra. I find the Respondent met its burden under *Anheuser Busch* by providing the redacted witness statements to the Union.

[8] The witnesses' accounts were clearly relied on in making the decision to terminate Perkin.

[9] There was also testimony that one of the witnesses expressed concern Perkin would not pass him. This was in connection with Limpin's interviews, however, not the emails. (Tr. 169–170.) The interviews and notes are discussed below.

B. Craig Gardina and Richard Wadsworth

Paragraphs 8 and 9 of the complaint allege the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide and/or timely provide the Union with any and all incident reports, documents, statements, e-mails, video, audio or other items used in connection with Respondent's investigation that led to the termination of employees Craig Gardina and Richard Wadsworth, or seek an accommodation with the Union.

The information request regarding the Wadsworth and Gardina grievances primarily concerns emails and the interview notes from the witness who reported concerns about firearms at work. It is clear this witness disclosed her identity to the Respondent very reluctantly, after requesting and being assured confidentiality.

The Respondent did not provide the emails pursuant to the Union's request, though they were admitted into evidence at the hearing with redaction of the author's identity, as described above. I agree with the Respondent that it had a legitimate confidentiality interest in withholding the identity of the witness who wrote the emails. I further agree that this confidentiality interest outweighed the Union's need for the identity of the emails' author.[10]

Though, as the General Counsel points out, there is no evidence that Wadsworth or Gardina had threatened or intimidated employees, this misses the point. It would defy any measure of common sense to find an individual who believes coworkers are breaking the employer's rules and bringing deadly firearms into the workplace would not legitimately fear for his safety by reporting this conduct.[11] Citing to *Pennsylvania Power Co.*, the General Counsel argues that "a licensed, sober, professional carrying a legal firearm does not present even close to the same public safety concerns as an intoxicated person operating heavy machinery and/or nuclear power plant while intoxicated." No relative analysis is necessary, however, because the threat of workplace violence is clearly a legitimate and grave safety concern. In the case of Wadsworth, the evidence is clear that he was willing to break the Respondent's rules and bring a Glock pistol loaded with a 10-round magazine to the workplace. Though it is unclear whether Gardina had a firearm at work, it is the potential harm the alleged reported misconduct may bring that is at issue. As the Board stated in *Pennsylvania Power Co.*, supra at 1107, "To overlook the pervasive drug problem in this country and in the workplace, and to disregard the violence that accompanies that national concern would be unrealistic and contrary to national policy." This rationale applies with equal force to shootings in the workplace.

I agree with the Respondent that AMR has a substantial interest in maintaining the confidentiality of individuals who report other employees carrying firearms to the workplace to protect the employees' safety and avoid chilling further employee complaints. I therefore find the Respondent has met its burden to prove it had a legitimate and substantial confidentiality interest permitting it to withhold the identity of the witness who sent the emails that outweighs the Union's need for this information. The Respondent, however, was required to offer an accommodation, such as providing the emails in redacted form to conceal the author's identity. No evidence was presented that such an offer was made. I therefore find the Respondent failed to offer an accommodation with respect to the emails, and violated the Act as alleged.

The Respondent did not provide the notes from Limpin's interview with the witness. For the same reasons as with the Perkin interview notes, I find this was a witness statement under *Anheuser Busch*. As such, the Respondent was not obligated to provide it. The Respondent was, however, required to offer the accommodation of providing a summary of the statement in a manner that did not reveal the informant's identity. See *Postal Service*, 332 NLRB 635, 637 (2000); *Pennsylvania Power*, supra at 1106. The Respondent argues the termination letters for Wadsworth and Gardina satisfy this requirement. I disagree. First, as the General Counsel points out, the Respondent did not inform the Union that the termination letters were provided as the witness statement summaries. I further agree with the General Counsel that the termination letters lack any meaningful details such as the dates of the allegations, the manner in which the allegations were made, and any specifics of the witness's observations and/or knowledge. They do not constitute a bargained-for accommodation "that satisfies both the union's needs and the employer's justified confidentiality concern." *Exxon Co.*, 321 NLRB 896, 899 (1996), citing *Pennsylvania Power Co.*, supra at 1105–1106.

Finally, the General Counsel argues that the Respondent failed to meet its affirmative obligation to inform the Union that certain categories of information did not exist. It is clear, however, that Elzig informed Misner the Respondent had provided all of the information the Union had requested in the Gardina/Wadsworth matter, other than the investigative report discussed directly above.[12] (GC Exh. 15.) This conveys the very same information as telling the Union certain categories of information do not exist. I therefore find the General Counsel's argument on this point unpersuasive.

CONCLUSIONS OF LAW

1. By failing to provide non-confidential information requested by the Union and failing to seek an accommodation with the Union regarding confidential requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By failing to provide non-confidential information requested by the Union and failing to seek an accommodation with the Union regarding confidential requested information, the Respondent has violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom

[10] For the same reasons as explained regarding Tracy Perkin, I find the information is relevant to the Union's representational function.

[11] The individual making the report was identified as male. (GC Exh. 15.)

[12] The General Counsel argues the Respondent failed to deny certain categories of information regarding the Perkin request, but this goes beyond the complaint allegations.

and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Respondent unlawfully refused to provide the Union with the December 25, 2014 emails used in the Perkin investigation, the Respondent shall be ordered to provide the Union with this information.

Having found the Respondent failed to seek an accommodation with the Union regarding the witness statements and the emails from the witness in the Gardina/Wadsworth investigations, the Respondent shall be ordered to bargain with the Union toward an accommodation that satisfies both the Union's needs and the employer's confidentiality concern.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, American Medical Response West, Stockton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully refusing to provide the Union with the December 25, 2014 emails used in the Perkin investigation, the Respondent shall be ordered to provide the Union with this information;

(b) Unlawfully failing to seek an accommodation with the Union regarding the witness statements and the emails from the witness in the Gardina/Wadsworth investigations;

(c) 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) Provide the Union with the December 25, 2014 emails used in the Perkin investigation.

(b) Bargain with the Union toward an accommodation that satisfies both the Union's needs and the employer's confidentiality concern regarding the witness statements and the emails from the witness in the Gardina/Wadsworth investigations.

(c) Within 14 days after service by the Region, post at its facility in Stockton, California, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 32, 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] [members] [employees and members] 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 January 27, 2015.

(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.

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 17, 2015

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 refuse to bargain in good faith with the United Emergency Medical Services Workers AFSCME Local 4911, AFL–CIO (the Union) regarding wages, hours and other working conditions of the employees in the following appropriate unit:

> All full-time and regular part-time employees employed in Northern California as described in "Article 1-Recognition" of our current collective-bargaining agreement with the Union effective January 1, 2015, through June 30, 2018.

WE WILL NOT fail and/or refuse to provide and/or timely provide the Union with information that is relevant and necessary to its role as your collective-bargaining representative, including the processing of grievances.

WE WILL NOT fail and refuse to bargain in good faith with the Union toward a reasonable accommodation as to requested information for which we claim a legitimate confidentiality interest.

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[13] 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.

[14] 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."

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

WE WILL to the extent we have not already done so, provide the Union with the non-redacted December 25, 2014 emails from employees utilized in the Perkin investigation.

WE WILL provide the Union with a summary of the statements provided by the informant, on which the Respondent relied to form its suspicion that led to its investigations of Craig Gardina and Richard Wadsworth for allegedly having firearms at the workplace in contravention of Company policy. This summary need not contain any information from which the identity of the informant can be ascertained, and any doubt whether the information can be used to identify the informant should be resolved in favor of nondisclosure.

AMERICAN MEDICAL RESPONSE WEST

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/32-CA-147259 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.