Southern California Gas Company *and* Utility Workers Union of America, Local 483. Case 31–CA–26454

February 3, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On August 26, 2004, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

ORDER

The National Labor Relations Board orders that the Respondent, Southern California Gas Company, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith by declining to provide Utility Workers Union of America, Local 483 with information necessary and relevant to administer the collective-bargaining agreement applicable to the Respondent's transmission and storage employees represented by Local 483.

(b) In any like or related manner interfering with, restraining, or coercing its 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 Local 483 with the most recent list of contractors employed by the Respondent who comply with the United States Department of Transportation's rule regarding operator qualification and certification, including the date the Respondent prepared that list, as Local 483 requested on June 17, 2003.

(b) Within 14 days after service by the Region, post at its facilities copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by 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 July 22, 2003.

(c) 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.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

[1] We agree with the judge's finding that the Respondent violated Sec. 8(a)(5) when it refused to furnish the information requested by Utility Workers Union of America, Local 483 (the Union) on June 17, 2003, but we modify the judge's rationale in one respect. The Union represents a unit of the Respondent's employees who perform hazardous gas storage and transmission work. Working alongside unit employees are employees of outside contractors. Pursuant to Federal regulation, both groups of employees must be "operator qualified." On June 17, 2003, the Union asked the Respondent for its most recent list of contractors maintaining an operator-qualification plan, explaining that the information was relevant to the Union's administration of the collective-bargaining agreement as it related to the safety of unit employees. In finding that the Union established a factual basis for this request, the judge relied on (1) evidence that a substantial majority of the Respondent's contractors lacked an operator-qualification plan, (2) evidence that contractor employees were unfamiliar with operator-qualification requirements, and (3) worksite accidents that occurred in June 2002 and July 2003. In adopting the judge's decision, we find that the Union demonstrated a factual basis for its information request even without relying on the June 2002 and July 2003 accidents.

[2] We shall modify par. 2(a) of the judge's recommended Order to delete the phrase referencing a 14-day period in the requirement to provide the requested information, see *Farmer Bros. Co.,* 342 NLRB 592, 593 fn. 1 (2004), and to correct inadvertent errors. We shall also substitute a new notice in conformity with the recommended Order as modified.

[3] 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."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain in good faith by declining to provide Utility Workers Union of America, Local 483, with information necessary and relevant to administer the collective-bargaining agreement applicable to our transmission and storage employees represented by Local 483.

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

WE WILL provide Local 483 with the most recent list of contractors we employ who comply with the United States Department of Transportation's rule regarding operator qualification and certification, including the date we prepared that list, as requested by the Union on June 17, 2003.

SOUTHERN CALIFORNIA GAS COMPANY

Brian D. Gee, Atty., for the General Counsel.
Larry I. Stein, Atty., of Los Angeles, California, for the Respondent.
Dennis Zukowski, Union President, of Santa Barbara, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. The issue here concerns an employer's refusal to furnish information about matters outside the bargaining unit to the labor organization representing the unit. Based on charges Utility Workers of America, Local 483 (the Charging Party or Local 483), filed on September 17, 2003,[1] the Regional Director for Region 31 issued a formal complaint on December 16, alleging Southern California Gas Company (the Company or Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).[2] It claims that Respondent failed to furnish Local 483, the bargaining representative for its transmission and storage employees, with relevant information requested about the operator-qualifications of contractor employees. Respondent admits that it refused to furnish the requested information but denies the relevance and necessity of the requested information to Local 483's statutory function as an employee bargaining representative.

I heard this case at Los Angeles, California, on June 7, 2004. The parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file posthearing briefs. Having carefully reviewed the entire record[3] mindful of the impressions gained from the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I find Respondent violated the Act, as alleged, based on the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, with offices and facilities at various California locations, including Los Angeles, generates and distributes natural gas. In the calendar year prior to the issuance of the complaint, Respondent received gross revenues in excess of $500,000, and purchased and received goods at its California facilities valued in excess of $50,000 directly from locations outside that State. I find Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that, based on its gross revenues and direct inflow, it would effectuate the purposes of the Act for the Board to exercise its statutory jurisdiction to resolve this labor dispute.

Since 1970, Local 483 has served as the exclusive collective-bargaining representative of Respondent's transmission and storage employees. I find it to be a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Relevant Evidence

Respondent recognized the Union as the exclusive collective-bargaining representative of its storage and transmission employees in May 1970. This recognition has been embodied in successive collective-bargaining agreements. The effective dates of the current agreement run from April 1, 2002, through December 31, 2004 (CBA). (Jt. Exh. 3: 19.) The unit consists of approximately 250 employees working on the Company's gas transmission and storage operations. Except for 20 to 25 clericals, all unit employees work in the field on the pipelines and storage facilities. These field employees work in a dangerous environment with a volatile product under extreme pressures ranging up to 3000 pounds per square inch.[4]

The CBA permits the Respondent to utilize outside contractors to perform unit work under certain conditions. (Jt. Exhs. 3: 4–5.) However, CBA § 2.1(B)(1) bars the Company from completely contracting out the work of so-called "fenced-in classifications." The fenced-in classifications include virtually all of the unit's field workers. Still, outside contractors performed 77,257 and 55,481 hours of storage and transmission work in 2002 and 2003, respectively. (Jt. Exh. 2.) Although not entirely clear, justification for this quantity of unit work performed by outsiders likely rests with CBA § 2.1(B)(2) that permits the Company to contract out overflow work or tasks requiring specialized skills. Typically, contractor employees work in close proximity to unit employees and, as seen in one instance below, unit employees often have occasion to use contractor-installed equipment.

[1] All dates are in the 2003, unless otherwise indicated.

[2] Sec. 8(a)(5) provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of [its] employees." The General Counsel makes no claim that Respondent independently violated Sec. 8(a)(1).

[3] Certain errors in the transcript are noted and corrected.

[4] By contrast, natural gas normally enters a customer's household under pressure of about one-third pound per square inch.

Various Federal and State agencies regulate Respondent's operations, including the California Public Utilities Commission (California PUC) and the U.S. Department of Transportation (DOT). Effective October 26, 1999, DOT adopted an operator-qualification rule. 49 CFR Part 192. This rule required the Company (the Operator in the regulation) to develop and maintain a written operator-qualification plan by April 27, 2001, that detailed the means by which employees performing so-called "covered tasks" would be evaluated and certified as qualified. After that, the Company had until October 28, 2002, to evaluate and qualify all employees performing covered tasks, and to establish a supporting recordkeeping system. (GC Exh. 4: 2.) The Company's evaluation process determined an individual's ability to perform a covered task either through a written or oral examination, or through a review of the employee's work performance history. (GC Exh. 2: 1–2.)

The operator-qualification rule applied to the Company's contractors as well. To aid in compliance with the rule, the Company required contractors with 10 or more employees to adopt an operator-qualification plan that essentially mirrored the Company's plan. The Company offered to test, qualify, and maintain required records on a fee basis for contractors who employed fewer than 10 employees. Under the rule, company and contractor employees could only perform those covered tasks for which they were certified as "operator qualified" unless directly supervised in person by a task-qualified individual. (GC Exh. 2: 4.) The Company's FAQ document stated that the rule was designed to "reduce the risk of accidents on pipeline facilities attributable to human error . . . [and] to provide an additional level of safety." (GC Exh. 4: 1.)

The CBA also addresses safety. CBA § 2.5(C) provides: "The Union and the Company agree to cooperate in maintaining safe working conditions. No employee shall be required to work under conditions or operate equipment which does not meet the requirements of the lawful orders of the State of California pertaining to employee safety." (Jt. Exh. 3: 22.) Respondent disagrees with Local 483's claim that CBA § 2.5(C) incorporates the DOT operator-qualification rule.[5] Regardless, the CBA establishes safety committees at various levels throughout the Company's operations that meet periodically "to permit inspection, discussion, and review of local health and safety conditions and practices." (Jt. Exh. 3: 22–26.) Safety matters that cannot be resolved "to the satisfaction of Union representatives" may be referred to the grievance-arbitration procedures. (Jt. Exh. 3: 26.)

[5] Local 483 bases its argument that CBA § 2.5(C) incorporates the DOT's operator-qualification rule on California PUC General Order No. 112-E. That general order, adopted in 1995 and effective that same year, governs the design, construction, testing, maintenance and operation of gas utility gathering, transmission and distribution piping systems. It specifically incorporates the DOT's Federal Pipeline Safety Regulations at 49 CFR Parts 190–193 and 199, including future revisions. GC Exhs. 5: 2, § 104. The Company argues that, as the parties negotiated CBA § 2.5(C) before General Order No. 112-E and have left that contractual provision unchanged since, they did not contemplate the inclusion of the DOT operator-qualification rule within the parameters of CBA § 2.5(C).

A wide-ranging discussion about the operator-qualification rule, particularly as it applied to the Company's contractors, occurred at the Union's executive board meeting in March 2003. Two central concerns emerged from this discussion. First, the board members questioned whether a "level playing field" existed between the unit employees and contractor employees. Some members reported that unit employees complained about being subjected to the operator-qualification testing and certification related to jobs they performed for years while some contractor employees seemed unaware of any operator-qualification requirement. And second, Dennis Zukowski, Local 483's president, had received reports about contractor accidents and incidents that gave rise to safety concerns and a general belief that the contractors should also be operator qualified. As he explained:

> [W]e work in a dangerous environment and, for example, the facility that I work at is probably about as big as a football field. Now I could be on one end of the facility and a contractor on the other end of the facility. If there is an explosion caused by his negligence or his not being qualified to do the job, it's going to affect me. There's a chance that I'm going to be hit by shrapnel or caught in a firestorm or something like that. So . . . it is a concern. [On occasion] we work in close proximity. . . . [O]ftentimes we're working shoulder to shoulder . . . on various projects. . . . [W]e accept the fact that we have to be qualified and, actually, we welcome it, because, the more qualified we are, the better, but we just expect that the people who are working with us to be as qualified. [Tr. 20: 14–30: 1.]

The General Counsel adduced evidence about two accidents that purportedly gave rise to employee concern about contractor competence. The first involved station operations specialists Michael Bagley and Dan Perez in June 2002. Shortly before their accident, a contractor crew installed a valve and discharge pipe on a field line to facilitate depressurization. Later that day when Bagley and Perez attempted to depressurize that gas line, the recently installed discharge pipe blew off, catapulting both workers several feet through the air. Although Bagley suffered no severe injury, the discharge pipe struck Perez' arm and inflicted enough injury to require light duty assignments for the next several months.

The second incident involved an injury to Bagley in late July 2003 as he departed from a remote well where he had gone to verify that a valve was properly sealed. At the time, certain contractor employees were working at the well and their vehicles were parked across a dirt access road. While walking around the contractor vehicles as he left the site, Bagley slipped on a loose rock. When he grabbed for a truck to catch himself, he snagged and nearly severed his finger. He also strained his shoulder ligaments. As a result, he could not work for four months.

The Company appoints a committee to conduct an investigation of each on-the-job accident. This process, called a "root-cause analysis," seeks to identify various factors that contributed to an accident and to study possible preventive measures. Perez and Bagley attended the root-cause analysis involving the accidents detailed above. Perez concluded from what he over-

heard that the June 2002 accident resulted from the contractor's installation of an old discharge pipe with heavily rusted threads. Bagley felt his July 2003 accident resulted, in part, from the contractor's failure to leave a clear exit path so that he had been forced to depart the well site along a sloped route with a considerable amount of loose rock and dirt. Zukowski later learned from the site manager involved with the July 2003 accident that the contractor involved was not operator qualified.

The Union's executive board discussion prompted Zukowski to commence an investigation of the Company's policy concerning contractor compliance with the operator-qualification rule. By late April, Zukowski acquired a document published on the Respondent's website listing company contractors with an approved operator-qualification plan and those without. The vast majority had no approved plan. (GC Exh. 6.) A short time later, Zukowski asked Wager, Respondent's safety director for transmission and storage operations, whether the list was current. Wager confirmed that the list was not at all current.

Between May 4 and August 18, Zukowski, and labor relations managers Michael Shurley and Sue Bosworth exchanged a series of letters related to the subject of contractor compliance with the operator-qualification rule.[6] In his May 4 letter to Shurley, Zukowski claimed to be "investigating a grievance" about the Company's failure to adhere to "published requirements" requiring contractor employees to possess a card certifying the "covered tasks" they could perform. He asserted, "contractors at Goleta do not have such a card and claim no knowledge of the requirement to possess such a card." Apparently for that reason, Zukowski asked Shurley whether the Company's contractors had to carry cards listing their task qualifications, and if not, "what exactly is the Company policy." In addition, Zukowski's letter asked for the Company's position regarding unit employees insisting that contractors show their qualification cards since supervisors "are not always present." The letter concluded with four boilerplate paragraphs dealing with a time limit for responding, relevancy disputes, the effect of failing to respond, and a notice about the commencement of the time for filing a grievance.

Shurley sent Zukowski a written reply dated May 19. In it, Shurley assured Zukowski that management intended to comply with all "applicable laws and requirements."[7] Apart from that, Shurley asserted that he could not see the relevance of Zukowski's May 4 requests "as management is solely responsible for contractor personnel." Shurley requested that Local 483 report any instances of noncompliance with the operator-qualification requirements to the "appropriate management person right away" and that unit members should contact their supervisor if they had an issue with contractor personnel.

Zukowski responded to Shurley by a letter dated May 27. In it, Zukowski asserted that he was attempting to administer the agreement's section 2.5(C) safety provision. He told Shurley, in effect, that Local 483 believed that an unsafe condition existed if contractors could violate company safety procedures. He also advised Shurley that unit employees would "be happy to contact their individual supervisor if they believe Company policy is being violated" but they first needed to know what the policy was concerning contractor compliance with the operator-qualification requirements. He concluded by telling Shurley that unit employees had an issue with the "application and interpretation" of the operator-qualification requirements, and requested that Shurley "clarify this policy" so he could "intelligently represent the Union's interests as they relate to this policy."

Shurley replied in a letter dated June 6 that enclosed the Company's three-page "Operator-qualification Program—Implementation Policy for Contractors." The policy statement provides unequivocally that all "contractors performing covered tasks are covered under [the Company's operator-qualification] plan" (Jt. Exhs. 1: 7 at 1.1), and that the Company "required [them] to implement an [operator-qualification] Program (employee evaluation and record keeping)." (Jt. Exhs. 1: 7 at 2.1.) Shurley again asserted, "management is responsible for compliance" and pointed to specific provisions in the policy providing for company oversight. In essence, Shurley told Zukowski that, as management had the responsibility for administering the operator-qualification policy for contractors, employees should not request operator-qualification cards from contractor employees. Instead, he said, unit employees should direct their "questions and concerns" about contractor safety to a jobsite manager or supervisor.

In a letter to Shurley dated June 17, Zukowski asked for new and different information. This time he sought "the most recent list of qualified contractors that the . . . Company [employs]" and the date the list provided was formulated. He explained, by way of justifying his request, that managers had told him the list he obtained from the Company's website was outdated. He also explained that he wanted the list to investigate multiple safety inquiries he received from unit employees about having to work with, or in close proximity to, contractor employees who may or may not be operator qualified. This letter concludes with the same four-paragraph boilerplate language contained in Zukowski's initial request of May 4.

In a letter dated June 30, Shurley asked Zukowski to explain the relevance of his June 17 request. Zukowski submitted a written response to Bosworth on July 14. In it, Zukowski, enclosed his June 17 request to Shurley and justified the relevance of his request on the following grounds: (1) to aid in the investigation of a "system wide safety grievance" over the employment of contractors who may not be operator qualified; (2) to aid attempts to administer the "union/company agreement" concerning the legally required operator-qualification program for contractors "as discussed across the bargaining table"; and (3) to confirm his belief that the Company's withholding of information violated the 2.5(C) requirement that the parties "cooperate in maintaining safe working conditions."

Bosworth responded to Zukowski's letter on July 22. She denied any awareness of a "union/company agreement" relating to operator-qualifications of contractor employees and asserted "[m]anagement is responsible for administering . . . and . . . ensuring compliance with the [contractor operator-

[6] Bosworth replaced Shurley as the Company's labor relations manager around July 1.

[7] Shurley sent an interim response to Zukowski's May 4 letter and other information requests that merely stated the information would be furnished when it became available.

qualification] policy." She stated that she could not see the relevance of the request since the Company's operator-qualification policy for contractors does not cover represented employees, was not a subject of bargaining, and was within the Company's "sole and exclusive right to implement." She invited Zukowski to refer to prior correspondence on the subject "if you have a safety concern or question the qualifications of specific contract personnel" and asserted that the Company's implementation of the contractor policy evidenced its intent to comply with DOT regulations and section 2.5(C) of the Agreement.[8]

Zukowski replied on August 8. He claimed that the agreement requiring all represented and contractor personnel to be operator qualified or subject to the direct supervision of a qualified person had been "verbalized across the bargaining table." He reiterated that he was "investigating system wide complaints . . . about Contractors who may not be Operator Qualified and whose actions on the job can affect the safety of Local 483's members." He again asserted the Company's position that it had the sole and exclusive right to implement policies such as the operator-qualification program violated the contractual requirement that the "Union and Company agree to cooperate in maintaining safe working conditions."

Zukowski further argued that job safety "is always a mandatory subject of bargaining" and that the Agreement gave the Union the right to grieve "any dispute." For these reasons, he asserted that "we have the right to the requested data because it will help us to intelligently represent the bargaining unit in this possible grievance and/or bargaining" where he was attempting to "resolve this issue" before seeking NLRB intervention. Zukowski then added, "[T]his letter serves notice that we have satisfied the 'Peace Principles' of our Agreement and are free to make formal complaints to the CPUC and DOT about these issues."

In her reply dated August 18, Bosworth stated: "Local 483 does not represent contractors, therefore, the information you have been requesting will not be provided. Safety is a mandatory subject of bargaining for our employees and your members, not for contractors." She concluded by again telling Zukowski that unit employees should contact their supervisor if they have a safety concern about actions by contractors on the job. This letter effectively ended Local 483's pursuit of information from the Company; instead, it filed an unfair labor practice charge a month later.

B. Further Findings and Conclusions

In *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956), the Supreme Court held that an employer has a general obligation to provide its employees' bargaining representative with the information it needs to properly perform its statutory duties. Later, in *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967), the Supreme Court held that an employer's duty to bargain collectively under the Act includes an obligation to furnish information that allows a union to decide whether to process a grievance. Hence, a labor organization's right to information exists not only for the purpose of negotiating a collective-bargaining agreement, but also for the proper administration of an existing contract, including the bargaining required to resolve employee grievances. *Hobelmann Port Services,* 317 NLRB 279 (1995); *Westinghouse Electric Corp*., 239 NLRB 106, 107 (1978).

Ordinarily, a labor organization is "entitled to . . . information . . . to judge for [itself] whether to press [its] claim in the contractual grievance procedure or before the Board or Courts." *Maben Energy Corp.*, 295 NLRB 149 (1989). If the bargaining representative seeks information about the wages, hours, and other terms and conditions of employment for unit employees, the law deems that information presumptively relevant. *Jano Graphics, Inc*., 339 NLRB 251, 257, 259–260 (2003). However, no presumption of relevance attaches to information requested that relates to matters outside the represented unit. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). A bargaining agent seeking information pertaining to matters outside the unit bears the burden of establishing the specific relevance of the requested information. *NLRB v. George Koch Sons, Inc*., 950 F.2d 1324, 1331 (7th Cir. 1991). This relevance burden exists "whether or not [the] employer requested an explanation of the relevance of the request." *Schrock Cabinet Co.*, 339 NLRB 182 fn. 6 (2003). A party requesting information about matters outside the bargaining unit satisfies its burden by showing "there is a logical foundation and a factual basis for its information request." *Postal Service*, 310 NLRB 391 (1993). In these situations, the Board does not pass on merits of a potential grievance. *W-L Molding Co*., 272 NLRB 1239, 1240 (1984). As explained in *Shoppers Food Warehouse*, the Board applies a broad, discovery-type standard in determining the relevance of requested information even where a union must specifically demonstrate relevance. 315 NLRB 259.

Here, Local 483 made two distinct information requests in the correspondence exchanged with management between May and August. In the May 4 letter, Local 483 sought information as to whether contractor employees had to carry cards certifying that they were qualified to perform covered tasks and, if not, what was the Company's policy regarding this subject. The second request, contained in one of Zukowski's June 17 letters, sought an updated list of contractors who maintained an operator-qualification plan as required under existing company policy as well as the preparation date of the list.

The Company essentially complied with the May 4 request when, on June 6, Shurley sent Zukowski the Company's operator-qualification policy applicable to its contractors and reiterated that unit employees should address their concerns about contractor qualifications to their supervisors rather than interrogate contractor employees directly. But the Company steadfastly declined to furnish an updated list of contractors with an operator-qualification plan even though it admittedly maintains such a list.

As the General Counsel's brief correctly notes, the question presented is whether Local 483's June 17 information request was necessary and relevant to the performance of its duties as the employees' collective-bargaining representative. The Gen-

[8] Apparently before receiving or seeing Bosworth's July 22 letter, Zukowski dashed off a brief letter dated July 28 requesting that she furnish the information requested in his June 17 letter within 5 days.

eral Counsel contends that Local 483 needed the information to decide whether it should file a grievance alleging that unqualified contractors posed a safety threat to unit employees. In the General Counsel's view, "[t]he health and safety of unit employees is impacted by the qualifications—or lack thereof—of contractors, since the unit employees work alongside contractors and on equipment serviced by contractors." The argument formulated in the General Counsel's brief appears to assume that Local 483's June 17 information request was not presumptively relevant. Thus, the brief asserts that the June 17 request "had a *logical foundation and a factual basis* because the Union needed the information to decide whether it should file a grievance alleging that unqualified contractors posed a safety threat to unit employees." (GC Br. at 9.) (Emphasis added.)

Respondent foresees many serious disputes about contractor compliance with the operator-qualification rule that could cause disruptions to its entire transmission or storage operations. From Respondent's viewpoint, Local 483's information request discloses an intent to use CBA § 2.5(C) to monitor the Company's compliance with the operator-qualification rule, which DOT and the California PUC already oversee. But aside from this potential impact, Respondent argues that Local 483 failed to meet its burden of establishing the relevance of the requested data. Citing dicta in *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863 (9th Cir. 1977), that the required relevance showing "must be more than a mere concoction of some general theory," Respondent contends Local 483 has done little more than "[shout] safety without a showing of substance." Respondent points out that Local 483's request lacks the support of any empirical data showing the incidence of contractor accidents exceeded those of the unit employees. In addition, Respondent claims that DOT's operator-qualification rule has nothing to do with employee safety; instead, it asserts that this program focuses on the safety of the public. Respondent also contends that the operator-qualification program cannot be construed as a safety matter encompassed within agreement section 2.5(C) because that provision pertains only to compliance with state law instead of Federal law.[9]

Applying the applicable legal principles to the facts detailed above, I conclude, contrary to Respondent's claim, that Local 483 established the relevance of the information requested on June 17. Throughout his exchange of correspondence with Respondent's managers, Zukowski explained that he needed the information in order to make a determination about filing a grievance under CBA § 2.5(C). In the June 17 letter itself, Zukowski asserted that he needed the information to investigate multiple safety inquiries he received from unit employees about having to work with, or in close proximity to, contractor employees who may or may not be operator qualified. In his July 14 and August 8 letters to Bosworth, Zukowski stated specifically that he needed the requested information to investigate a potential "system wide safety grievance" over the use of contractors without an operator-qualification plan.

Ample objective evidence existed for Zukowski and Local 483 to consider filing a safety grievance over the contractor qualification issue. The Bagley and Perez injuries provide potential links between the quality of contractor work and the safety of unit employees. Zukowski's discovery of the contractor qualification list on Respondent's website disclosed that a substantial majority of Respondent's contractors lacked an operator-qualification plan despite the Company's claim that its policy required compliance with the DOT rule. Furthermore, Zukowski's own personal discussions with a limited number of contractor employees at his work site demonstrated that they lacked familiarity with the operator-qualification requirements.

Respondent's charge that Local 483, in effect, disguised its contractor information request under the rubric of safety in order to conceal its concerns over the outsourcing of unit work enhances rather than diminishes the relevance of this information request. Indeed, Zukowski did admit tacitly that Local 483 was concerned about unit employees competing with contractors on an uneven playing field. Given the outsourcing latitude available under CBA § 2.1(B)(2) and the proximity in terms of the duties and space shared by both sets of employees, safety and work preservation issues could easily overlap. So even assuming for argument's sake that Local 483's primary concern centered on the volume unit work performed by outside contractors, arguably nothing would prevent it from utilizing the contractual safety provisions to maintain a "level playing field" for the employees it represented, or from attempting to limit outsourcing to operator-qualified contractors during the next round of negotiations. The information sought here would be highly pertinent in either instance.

Additionally, the information sought here relates to a specific situation, to wit, utilizing contractors not in compliance with the operator-qualification rule in close proximity to unit employees. Respondent's claim that this amounts only to an abstract or intangible safety concern lacks merit. The contemporaneous Bagley and Perez incidents remove contractor safety qualifications from the theoretical realm. Although Respondent repeatedly asserted in its correspondence with Zukowski that it would take care of enforcing contractor compliance with the operator-qualification rule, he was not obliged to rely solely on the Company's good intentions regarding its enforcement as to contractors. *Oil Workers Local 6-418*, 711 F.2d 348, 361 (D.C. Cir. 1983). I find it axiomatic that the safety interests of the unit employees provides ample justification for their representative to seek access to detailed information as to whether Respondent requires contractor adherence to industry operator-qualification standards particularly where, as here, Local 483 independently acquired information arguably showing the Company's lax enforcement of any such requirement.

Moreover, I find Respondent's reliance on the *San Diego Newspaper Guild* case misplaced, as that case is factually distinguishable. There, the union requested information from the San Diego Union (SD Union), the employer, about individuals shadowing certain unit employees on the ground that it was investigating the shadows encroachment on unit work. For years, the SD Union had employed this technique in order to

[9] Respondent makes no claim that the June 17 request lies outside the scope of the substantive complaint allegation that "[s]ince about May 19, 2003, [it] has failed and refused to furnish the Union with the information requested by it." Even if such a claim had been made, I would find that the issue concerning the June 17 request has been fully litigated.

have replacements available whenever threatened with a Guild strike. The court denied Guild's petition to review of the Board's order dismissing the complaint against the SD Union for refusing to furnish the information. It found the Guild failed to show the relevance because it admitted knowing about all newly hired unit employees as contractually required, failed to show any unit work performed by the shadows, failed to show the SD Union deviated from its normal employee training program, failed to contradict the SD Union's evidence that it used the shadow technique only as a strike replacement device and took steps to insure that it would not impact unit work, and failed to show that it did anything other than ask for information from the SD Union to establish that the shadows encroached on unit work. Accordingly, the court felt the Guild's request for information was grounded merely on suspicion of a contract violation. 548 F.2d at 869. As shown above, that is far from the case here.

Finally, I find the situation here distinguishable from the recent decision in *Southern California Gas Co*., 342 NLRB 613 (2004), that issued after the parties filed their briefs in this matter. In that case, the panel majority concluded that Respondent's refusal to comply with Local 483's information request was justified as it "was in furtherance of its pursuit of a safety complaint before a third party, the [California] PUC." 342 NLRB 613, 616. Here, Local 483 has no pending matter before any regulatory agency related to its June 17 information request and has repeatedly asserted that it wants the information for purposes of administering the CBA.

For these reasons, I conclude that Respondent violated Section 8(a)(1) and (5) by refusing to provide Local 483 with the information Zukowski requested on June 17. *Oil Workers Local 6-418*, supra.

CONCLUSIONS OF LAW

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

2. Local 483 is a labor organization within the meaning of Section 2(5) of the Act.

3. The information requested by the Local 483 on June 17, 2003, concerning operator-qualification and certification plans applicable to nonrepresented contractor employees is necessary and relevant for it to perform its statutory duties as the collective-bargaining agent for Respondent's employees.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to furnish the Local 483 with the information described in paragraph 3, above.

5. Respondent's unfair labor practices 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 actions designed to effectuate the policies of the Act.

My recommended Order requires Respondent to furnish Local 483 with the information it requested in its June 17, 2003 letter.

[Recommended Order omitted from publication.]