

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

SEAN M. O'BRIEN

General President

25 Louisiana Avenue, NW
Washington, DC 20001



FRED E. ZUCKERMAN

General Secretary-Treasurer

202-624-6800
www.teamster.org

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VIA E-FILING

Elicia Watts

Director, Office of Appeals

National Labor Relations Board

1015 Half Street SE

Washington, DC 20570-0001

Re: Appeal of Dismissal in Case No. 07-CA-379127

Director Watts:

This appeal is submitted on behalf of Charging Party Teamsters Local Union 332 (the "Union") pursuant to 29 C.F.R. § 102.19(a). The Union filed this charge against Henry Ford Health Genesys Hospital (the "Hospital") on January 9, 2026, alleging that the Hospital violated §§ 8(a)(1) and (5) of the Act by unilaterally changing terms and conditions of employment while collectively bargaining without reaching impasse.¹ Region 7 dismissed the charge on April 7, 2026, in a decision displaying a stunning disregard of law and precedent. The Union urges the Office of Appeals to carefully examine the law and facts in this case and overturn the Region's flawed decision.

Background

The background of this case has been extensively ventilated in the various position statements the Union has submitted. Local 332 is the representative of a unit of approximately 700 registered nurses at the Hospital. (Rivera-Craigne Dec. 15 Affidavit ("KRC Dec. Aff."), 1:5-6). The collective bargaining agreement covering this unit expired on August 5, 2025.² (*Id.* at 1:7). Negotiations for a successor began on April 18. (*Id.* at 1:8-9). Entering negotiations, health insurance was one of the most important issues to the unit. (Wahlfors March 31, 2026, Affidavit ("Wahlfors Aff"), 1:6-8). On March 14, the Union sent the Hospital an RFI requesting basic information about the unit, including each unit employee's full-time/part-time status and health plan coverage selections.

¹ The Union amended the charge on March 27, 2026, to add the allegation that the Hospital's delay in providing relevant information the Union requested constituted an independent violation of § 8(a)(5). The charge requests injunctive relief under § 10(j).

² All dates in 2025 unless otherwise specified.

(KRC Dec. Aff., 2:10-14). The Hospital responded *without objection* to the Union's March RFI in June. (*Id.* at 3:4-5). The information it provided was inaccurate and incomplete, failing to specify the plan or coverage tier each employee had selected or the total number of FT/PT employees in each tier. (*Id.* at 3:5-9; Wahlfors Aff., 1:17-18, 2:1-2). In May, the Hospital proposed modifications to the structure of the unit's health insurance, sharply raising premiums and creating a dramatic discrepancy in rates between full-timers and part-timers. (*Id.* at 2:18-21; Wahlfors Aff, 1:10-14). It was impossible for the Union to comprehensively evaluate the cost and impact of this proposal without the complete information it requested in March. (Wahlfors Aff., 1:14-16).

In subsequent months the Union renewed this RFI — verbally and in writing — on several occasions. Ultimately, at a bargaining session in October, the Hospital alleged that HIPAA bars disclosure of the requested info, without offering any accommodation. (KRC Dec. Aff., 3:17-22). In the following weeks the Hospital continued to assert this position, despite the Union's consistent dismantling of it. (*Id.* at 4:11-13). The Hospital has refused to cite any statutory or regulatory provisions in support of its HIPAA interpretation. (*Id.* at 4:14-15).

The Union sent another request for the information in October. And in an effort to accommodate the Hospital's baseless HIPAA concerns and expedite negotiations, the Union proposed replacing employee names with ID numbers. (*Id.* at 3:21-22). The Hospital rejected this proposal and responded the next day with its own unrealistic accommodations, which would have required the Union to gather the information directly from each member, seek authorization from each member, or enter a confidentiality agreement preventing it from verifying the accuracy of the information. (Rivera-Craigne March 4, 2026, Affidavit, 2:10-17 ("KRC March 4 Aff.")). This would have been extremely burdensome and would not have yielded accurate information in a timely manner. At a bargaining session later that day the Union explained that the Hospital's proposed alternatives were inadequate and reasserted its willingness to strip member names, which the Hospital insisted would not resolve its unspecified HIPAA concerns. (*Id.* at 3:4-12).

The unit instituted an unfair labor practice strike in September. (KRC Dec. Aff. 2:3-4). This strike, which is ongoing, was precipitated and has been prolonged by, among other things, the Hospital's refusal to provide the information necessary for the Union to make informed proposals regarding the unit's health insurance. Late on the evening of November 4, the Hospital announced that the parties had "reached an impasse" and that it would "implement portions of its current proposals," including its concessionary health care changes. In the instant charge the Union alleges that this declaration of impasse and unilateral implementation violated §§ 8(a)(1) and (5) of the Act. The parties remain in negotiations, and the Hospital still has not satisfied the Union's March RFI.

The Region dismissed this charge on April 7, 2026, finding that the Hospital attempted to provide the requested information and timely "raised substantial and

legitimate confidentiality concerns and made a reasonable, good-faith effort to accommodate the Union's needs." (Dismissal Letter dated April 7, 2026 ("DL") at 3 ¶ 2).

Argument

Region 7's dismissal rests on three conclusions: (1) that the Hospital's HIPAA defense was "substantial and legitimate," (2) that the Hospital made a "reasonable, good-faith effort to accommodate the Union's needs," and (3) that the Union improperly rejected the proposed alternatives "out of hand." As elaborated below, each is erroneous.

a. Doctrinal background

We start with basic principles. First, as the Region correctly recognizes, "an employer has a statutory obligation to provide requested information that is relevant." (DL at 2 ¶ 3); see *Menorah Medical Center*, 362 NLRB 1746, 1765 (2015). Furthermore, since any information pertaining to terms and conditions of employment is "presumptively relevant," *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003) — including information concerning the unit's medical coverage, such as a "description of the healthcare plan," "the carrier of the health benefit plan," and the "level of coverage," *Centinela Hospital Medical Center*, 363 NLRB 411, 428 (2015) — the Region also correctly recognized that the information the Union requested here is "relevant," DL at 2 ¶ 3. It is also settled that "an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment." *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991). And, critically, "a party's failure to provide requested information that is necessary for the other party to create counterproposals, and, as a result, engage in meaningful bargaining, will preclude a lawful impasse." *E.I. Du Pont Co.*, 346 NLRB 553, 558 (2006) (emphasis added).

The upshot is that impasse is unavailable where an employer refuses to provide relevant requested information — including information concerning the unit's medical coverage — unless it has a valid reason for doing so. The Hospital concedes that it has not fully produced the healthcare information the Union requested in its March RFI. Since the defense it asserted was untimely, unsupported, and ultimately meritless, it violated § 8(a)(5) by failing to provide the information, and the Union had no duty to engage with the alternatives it proposed. The unsatisfied March RFI therefore precluded impasse and rendered unlawful the Hospital's unilateral changes. The Region concludes otherwise on the theory that the Hospital appropriately raised "substantial and legitimate confidentiality concerns" (over four months after the Union's renewed request for accurate information) and "made a reasonable, good-faith effort to accommodate the Union's needs," which the Union rejected "out of hand." Each of these findings is flawed.

b. The Hospital's HIPAA defense was untimely and lacked merit

First, as to the merits of the Hospital's defense, the Region's conclusion that the HIPAA concerns were "substantial and legitimate" wholly ignores the relevant legal provisions and disregards precedent. (DL at 3 ¶ 2). HIPAA forbids the disclosure of

“individually identifiable health information,” defined as information which “relates to the past, present, or future physical or mental health or condition of an individual” or the “provision of health care to an individual.” 42 U.S.C. §§ 1320d(6), 1320d-6(a). The Union’s request merely sought the tier of coverage each unit employee had selected, not specific information regarding employees’ health conditions or care they had received. And more to the point, to the extent this information implicated HIPAA’s protections, the regulatory definition of protected health information expressly excludes “employment records held by a covered entity in its role as employer.” 45 C.F.R. § 160.103. Moreover, the regulations broadly authorize disclosure of protected health information where “required by law,” *id.* § 164.513, which DHS has recognized encompasses information requested in the context of collective bargaining, *see* 65 FR 82462, 82598 (Dec. 28, 2000) (“To the extent a covered entity is required by law to disclose protected health information to collective bargaining representatives under the NLRA, it may do so without an authorization”). For these reasons, the NLRB has squarely rejected the contention that “health insurance selections are covered by HIPAA,” affirming a judge’s conclusion that such information is “necessary and relevant to bargaining.” *Queen of the Valley Medical Center*, 368 NLRB No. 116, slip op. at 27 (2019); *see also Memorial Hospital of Salem County*, 359 NLRB 695, 698 (2013) (adopting ALJ’s rejection of HIPAA defense). The Region does not cite any statutory text, regulatory provisions, or caselaw to support its conclusion that the Hospital’s HIPAA defense was “legitimate.”

As to procedure, the Region’s conclusion that the Hospital “timely raised” its meritless HIPAA defense is, respectfully, detached from reality. (DL at 3 ¶ 3). The Region’s own investigation reveals this is nonsense. According to the Region’s findings, the Hospital did not assert the HIPAA defense until October 8 — *seven months* after the Union’s request for the information, *four months* after the Hospital initially responded with inaccurate and incomplete data, and nearly *two months* after the Union advised the Hospital that this response was unsatisfactory. (*See* DL at 2 ¶¶ 1, 2).³ There is no universe in which this is timely. Since employer “normally must raise any confidentiality claim in its *initial response* to the information request,”⁴ *ATI Specialty Alloys & Components, Millersburg Operations*, 369 NLRB No. 128, slip op. at 2 (2020) (emphasis added), the Board has found

³ The timeline the Region relies on is that: (1) the Union requested unit employees’ health plan enrollment and coverage levels on March 14; (2) in response the Employer provided inaccurate data as to member’s selections on June 25 and aggregate data on August 12; (3) the Union advised the Hospital that the aggregate data did not satisfy the RFI on August 22; (4) the Hospital responded that it could not provide specific information without written authorization from each member on August 22; and (5) the Employer stated the requested information could not be provided because of HIPAA concerns on October 8.

⁴ The Region analyzes the Hospital’s HIPAA defense under the confidentiality framework. This is consistent with precedent. *See Queen of the Valley Medical Center*, 368 NLRB No. 116, slip op. at 27 (2019).

untimeliness where an employer “did not raise its alleged HIPAA concerns until *three weeks* after the Union’s first request,” *Hospital Mutual Auxilio Mutuo de Puerto Rico, Inc.*, 374 NLRB No. 6, slip op. at 6 (2024) (emphasis added); see also *The Ruprecht Company*, 366 NLRB No. 179, slip op. at 4 (2018) (confidentiality defense untimely where raised one week after RFI); *Commonwealth Electric Company*, 373 NLRB No. 50, slip op. at 1 fn.2 (2024) (confidentiality defense untimely where “raised two months after the initial information request was made”). Here, the Hospital not only failed to raise a confidentiality defense in its initial response, it actually attempted to provide the requested data. This significantly undermines the credibility of its alleged confidentiality interest.

The Union has been unable to find any cases in which an employer has been permitted to raise a confidentiality defense after initially providing a defective or incomplete version of the requested information without objection. The Union has also been unable to find any cases in which an employer has been permitted to raise a confidentiality defense for the first time several months after the initial RFI — or, even on the Region’s more charitable construction of events, at least several weeks after the Union informs the employer that its response is inadequate.⁵ The Region does not cite any supporting caselaw. This delay not only waives the defense; it is an independent 8(a)(5) violation. See *Columbia University*, 298 NLRB 941, 945 (1990) (“[A]n employer must respond to a union’s requests for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance within a reasonable period of time. Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act.”).

The Region’s conclusion that the Hospital’s confidentiality defense was “legitimate” and “timely raised” defies law and precedent. In reality, the Hospital waived its confidentiality defense by failing to invoke it until several months after the RFI, and the defense was substantively baseless. *Postal Service*, 364 NLRB 230, 231 (2016) (“By failing either to timely assert a confidentiality interest or propose an accommodation, the Respondent waived its opportunity to raise those defenses”); *American Baptist Homes of the West*, 362 NLRB 1135, 1137 fn. 7 (2015) (“[T]he employer must assert a claim of confidentiality (or waive it) in response to the union’s request for information”). The Region’s analysis is unsupported by any existing caselaw.

⁵ The Region finds that on August 22 the Hospital “responded that it could not provide dependent-specific healthcare information without written authorization from each of the affected members.” The Hospital did not explain why this was so — not even the broad gesture toward “HIPAA concerns” it offered on October 8. Such a general assertion of confidentiality, without any explanation, does not properly raise a confidentiality defense. *American Medical Response of Connecticut, Inc.*, 371 NLRB No. 16, slip op. at 13 (2022) (“A blanket claim that information is confidential or proprietary, without more, does not satisfy the employer’s burden.”).

c. The Hospital's proposed accommodations were untimely and unreasonable

For similar reasons, the Region's conclusion that the Hospital made a "reasonable, good-faith effort to accommodate the Union's needs" reimagines reality. (DL at 3 ¶ 2). In fact, the caselaw makes clear that the Hospital's proposed alternatives — offered only after the Union proposed its own accommodation — were untimely and unreasonable.

The Region finds that the Employer offered accommodations on October 29, which the Union rejected. Again, according to the Region's own timeline, this was more than seven months after the initial request for information and more than two months after the Union advised the Hospital that the data it provided was inadequate. The proposed accommodation was therefore untimely. *See Finley Hospital*, 362 NLRB 915, 923 (2015) (finding that employer's three-month delay in offering accommodation was untimely); *A-1 Door & Building Solutions*, 356 NLRB 499, 501 fn. 10 (2011) (employer's offer of accommodation "was untimely, coming 4 months after the Union's [information] request"). And the Region recognizes it was the Union, not the Hospital, that initiated the accommodative dialogue (*see* DL at 2 ¶ 2) — even though the Hospital was the party that had an "affirmative duty to seek an accommodation." *A-1 Door & Building*, 356 NLRB at 501; *The Ruprecht Company*, 366 NLRB No. 179, slip op. at 4 (2018) ("[T]he Board has long held that the party asserting confidentiality has the burden of proposing the accommodation."). The Hospital's failure to do so is also fatal to any accommodation defense. *See Postal Service*, 374 NLRB No.7, slip op at 9 (2024) ("Here, the Respondent never raised such a contention to the Union or sought an accommodation, and on that basis alone any confidentiality defense fails"). The Hospital's failure to initiate the accommodations discussion, in conjunction with the dozen or so unfair labor practice charges still pending against it, should shatter any illusion that it has approached this information request in good faith.⁶ *See, e.g., Groh, George & Sons*, 141 NLRB 931, 939-40 (1963) ("An analysis of the cases wherein the Board has made this 'good-or-bad faith determination' suggests rather strongly the pervading importance of contemporaneous unlawful conduct as a cardinal criterion").

Substantively, the Region does not attempt to explain how the Hospital's proposed accommodations were "reasonable." An employer generally must provide information "in a manner not so burdensome or time-consuming as to impede the process of bargaining." *Cincinnati Steel Castings Co.*, 86 NLRB 592, 593 (1949). For obvious reasons, forcing the Union to obtain authorization or information individually from hundreds of employees, many of whom are not Union members (but the Union nonetheless has a duty to represent), would have been prohibitively burdensome and time-consuming. And more fundamentally, irrespective of the burden, it is "against the basic principles of the [Act]"

⁶ See Case Nos. 07-CA-379127; 07-CA-375650; 07-CA-374328; 07-CA-372876; 07-CA-37119; 07-CA-362986; 07-CA-349102; 07-CA-348860; 07-CA-348552; 07-CA-348509; 07-CA-342651; 07-CA-336634; 07-CA-330719; 07-CA-296420.

to require that a union “speak with each employee to get their agreement to release their information.” *Commonwealth Electric Company of the Midwest*, 373 NLRB No. 50, slip op. at 12 (2024). Under such a regime, the union’s right to “obtain necessary and relevant information would depend on the desires of each bargaining unit employee.” *Id.* This is intolerable, because “[t]he right of a collective bargaining representative to [relevant info] cannot be made contingent upon the consent of the individual employees, any more than it can be made contingent upon the consent of anyone else.” *Utica-ObsERVER Dispatch*, 111 NLRB 58, 64 (1955). That the Hospital would offer such an accommodation should have alerted the Region to its bad faith. As to the proposed confidentiality agreement, the Union explained at the time that it would have operated to bar the Union from confirming the accuracy of the provided information with unit employees. (See KRC March 4 Aff, 4:2-6). In declaring the Hospital’s proposed accommodations “reasonable,” the Region wholly overlooks the undisputed fact that the Hospital has already provided flawed data, which made the Union’s insistence on retaining its ability to verify not only sensible but necessary.

d. The Union had no obligation to engage with the Hospital’s untimely, unreasonable accommodations

The Region concludes that the Union “rejected the [Hospital’s] offer of accommodations out of hand, thus effectively precluding a test of the Employer’s willingness to give the Union information it requested on mutually satisfactory terms.” (DL at 3 ¶ 2). This ignores that under settled law the Union had no obligation to engage with the Hospital’s proposed alternatives because (1) they were untimely and (2) the Hospital never demonstrated the legitimacy of its HIPAA concerns.

First, as demonstrated above, since the Hospital did not propose any accommodations until seven months after the initial RFI and two months after the Union advised that its response was unsatisfactory, it “waived its opportunity to raise those defenses.” *Postal Service*, 364 NLRB at 231. On that basis, then, the Union was not obligated to engage with its proposed accommodations.

Further, the employer bears the burden of proving the legitimacy of its alleged confidentiality interests. See *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). And the Hospital never attempted to do so — it has done nothing more than assert amorphous “HIPAA concerns” while, despite the Union’s persistent demands, refusing to provide any citations to supporting legal authority. Such “[b]lanket statements are insufficient to establish a confidentiality interest.” *John Gore Theatrical Group, Inc.*, 372 NLRB No. 114, slip op. at 1 fn. 3 (2023); see *American Medical Response of Connecticut, Inc.*, 371 NLRB No. 106, slip op. at 13 (2022) (rejecting employer’s “conclusory explanation” as to why requested information was confidential). And, crucially, where an employer fails to establish a legitimate confidentiality defense, the union is “under no obligation to engage in accommodative bargaining.” *Commonwealth Electric Company of the Midwest*, 373 NLRB No. 50, slip op. at 1 fn.1; see also *Nexstar Broadcasting, Inc.*, 370 NLRB No. 72, slip op. at 1

n.2, (Jan. 14, 2021) (“Accommodative bargaining is required only if the respondent has established a legitimate and substantial confidentiality interest”). Thus, since the Hospital “did not provide a legitimate explanation for withholding the information,” *UPMC Western Psychiatric Hospital*, 373 NLRB No. 98, slip op. at 7 (Sept 6, 2024) the Union was “under no obligation” to explore its proposed alternatives, *Commonwealth Electric*, 373 NLRB slip op. at 1 fn.1.

To reiterate, we cannot overemphasize that, for the reasons outlined above, the Union had no legal obligation to engage in accommodative bargaining. Yet even so, the Union did not “ignore the employer’s concerns or refuse to discuss a possible accommodation,” as the Region suggests. (DL at 3 ¶ 1). Rather, evidence the Union submitted to the Region — curiously omitted from the Region’s narrative — reveals that in the interest of reaching agreement it attempted to continue the dialogue, explaining to the Hospital why its alternatives were inadequate and reasserting its own proposed accommodation, namely, replacing employee names with ID numbers. (KRC March 4 Aff, 3:4-13). In response, the Hospital continued to assert its baseless HIPAA objection (while still refusing to provide any supporting citations) — which were even more transparently unjustified where employee names would be withheld. (*Id.* at 4:6-11). For the Region to find that the Union “effectively preclud[ed]” further discussion on these facts is absurd. (DL at 3 ¶ 2). The Union did exactly what accommodative bargaining requires, as the Board has made clear that where “the union is dissatisfied with the offer” it is obligated to do no more than “respond and explain why the proffered accommodation is insufficient.” *Piedmont Gardens*, 362 NLRB 1135, 1137 fn. 7 (2015).

Lastly, with respect to delay, the law requires that an employer make a “reasonable good faith effort to respond to the request as promptly as circumstances allow.” *Allegheny Power*, 339 NLRB 585, 587 (2003). According to the Region’s timeline, while the Union requested the health insurance information on March 14 — and repeatedly “reiterated its request” in subsequent weeks (DL at 3 ¶ 3) — the Hospital did not attempt to provide any responsive data until June 25 (and provided flawed and inaccurate data on that date), did not gesture at any confidentiality defense until August 22, and did not specifically invoke HIPAA until October 8. Under the Region’s factual findings, then, it took the Hospital 14 weeks to provide any response and at least 23 weeks to assert a confidentiality interest. The Region casually concludes, in barely a few sentences of reasoning, that this “does not constitute an unlawful delay” because the Hospital “advised it was working on and/or looking into it.” (DL at 3 ¶ 2). Under the Region’s theory, then, so long as an employer advises the union it is “looking into it,” it may take several months to respond to a request for basic information essential to bargaining. This would defeat § 8(a)(5)’s bargaining obligation — the centerpiece of the Act — and, unsurprisingly, is at odds with a mountain of precedent. *See, e.g., Capitol Steel & Iron Co.*, 317 NLRB 809 (1995) (finding 2 week delay unlawful); *Aoelian Corp.*, 247 NLRB 1231, 1245 (1980) (3 weeks); *Postal Service*, 308 NLRB 547, 551 (1992) (4 weeks); *Postal Service*, 332 NLRB 635 (2000) (5 weeks); *Linwood Care Center*, 367 NLRB No. 14, slip op. at 5 (Oct 10, 2018) (6

weeks); *Woodland Clinic*, 331 NLRB 735, 737 (2000) (7 weeks); *Solution One Industries*, 372 NLRB No. 141, slip op. at 28 (2023) (8 weeks); *Santa Barbara News-Press*, 358 NLRB 1415, 1450 (2012) (9 and 10 weeks); *Starbucks Corporation*, 373 NLRB No. 48, slip op. at 1 fn.1 (2024) (12 weeks); *Postal Service*, 374 NLRB No. 7, slip op. at 9 (Dec 16, 2024) (15 weeks).

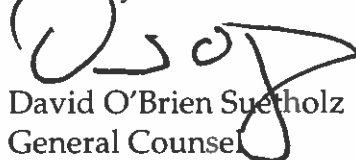
Conclusion

In conclusion, the Region's conduct on this charge should be deeply troubling to anyone who believes in enforcing federal labor law or generally upholding the rule of law. The Region defies law and precedent — which the Union has vigorously invoked in a sequence of position statements — to somehow, incredibly, recast an employer's assertion of a demonstrably baseless confidentiality interest *seven months* after the union's RFI, *four months* after the employer respond with inaccurate data, and *two months* after the union advised that the inaccurate response was unsatisfactory (this according to the Region's own timeline) as a "reasonable, good-faith effort" to comply with its fundamental obligation to provide relevant information in a timely manner.

This is a surreal reimagining of reality and distortion of precedent. The law is clear that HIPAA does not cover health insurance selections and does not apply to employment records held by an employer or in the context of collective bargaining. The law is clear that confidentiality interests are waived where they are not raised in the employer's initial response to the information request. The law is clear that a union has no duty to explore accommodations where the employer's assertion of a confidentiality interest is unsubstantiated and untimely. To conclude that the instant charge lacks merit requires disregarding or disfiguring all these basic principles.

By declining to prosecute a very basic unfair labor practice — refusing to provide relevant information — that has caused hundreds of nurses to strike for many months, Region 7 has abdicated its statutory responsibility to "promote the flow of commerce" and "encourag[e] the practice and procedure of collective bargaining." 29 U.S.C. § 151. The Office of Appeals must immediately intervene and correct the Region's miscarriage of justice for these 700 nurses entering their eighth month on strike.

Sincerely,



David O'Brien Suetholz
General Counsel

International Brotherhood of Teamsters
DSuetholz@teamster.org