

Union's Failure to Provide Factual Reasons as to Why It Needed Certain Information Privileged Employer to Deny Request, NLRB Rules

Labor Relations Update Blog on **January 21, 2020**

In prior posts, we've discussed how information requests in the context of labor relations can be deceptively complex to comply with for employers. We've seen how an employer's [assertion of confidentiality](#), standing alone, is not enough to justify denying a request. Sometimes, albeit rarely, the NLRB has determined the subject of some requested information is not something that has to be turned over where the information sought is far removed from the union's representational responsibilities.

One of the most common issues in information request disputes is whether the union requesting the information has sufficient justification entitling it to receive the data. In [G4S Secure Solutions \(USA\) Inc. and Waste Treatment Security Guards Union 161 Case No. 19-CA-221172](#), the National Labor Relations Board dealt with a similar issue. The Board held that a security services company lawfully denied a union's request to obtain a copy of its contract with a client, finding that the union had failed to provide adequate reasons why the contract was relevant to its representation of security guards at the client's waste treatment plant. In doing so, the Board held that unions need to provide more than "mere speculation" that the requested information is relevant to their representation.

Background- Plant Gets New Security Subcontractor

A waste treatment plant contracted with a new security services company, the employer, to take over responsibility for security from its predecessor. As a result, the union, which represented the plant's security guards, found itself working for a new employer, pursuant to a new contract with the plant.

The union sent the employer a request for information seeking to obtain a copy of this contract. The employer denied the request, asking the union to provide specific reasons for why it would be entitled to obtain the contract.

Shortly thereafter, the union responded with an email describing in detail what information, including the contract, it was requesting and purporting to supply its reasons. The union's email noted that "the entirety of our work is based off this contract" and assumed, without stating why, that the contract would affect the terms and conditions of the guards' employment. In its email response the union stated:

Upon review I understand that our request of information, the contract between [client] and [employer] may have been a little vague. So we would like to explain and expand on our reasons why we have requested the contract.

- Contractual obligations to the client from [employer], to ensure the union can assist in meeting said obligations.
- Any and all information related to terms and conditions, wages, hours and work assignments, agreed to by [employer] and [client].
- For proper representation of the union members, any information related to officer and shift lead duties, including training, job descriptions, officer discipline, which is to include any information related to client request for removal of officers.
- Any and all information related to safety, including information about on shift safety representatives.
- The entirety of our work is based off this contract and is relevant based [sic].

Due to the sensitivity of the information, the union is willing to sign a non-disclosure agreement with you to show good faith in the matter. Furthermore, we would like to request all information concerning the cost of running the [] contract, including but not limited to wages, benefits, overhead etc. The Union reserves the right to request further relevant information on this matter. Please provide this information by May 28th. 2018. Please notify me immediately if there are.

In addition, the union had been involved in a dispute with the former employer of its members, a different security company, over whether their members were jointly employed by the company and the plant. In support of its request for information, the union sent the employer a copy of an NLRB Advice Memorandum from the Board regarding this dispute. The memorandum stated only that the plant and the former security company were joint employers, and described the relevant details of their relationship that led to its conclusion.

Board Finds No Legal Obligation to Provide Employer's Contract with Client

The Board agreed with the administrative law judge that the contract between the employer and the plant was not presumptively relevant because it did not directly relate to the employees' terms and conditions of employment. However, the Board found that the judge had erred in concluding that the relevance of the contract was established by the union's email and the advice memorandum.

The Board noted that to obtain information that is not presumptively relevant, a union must prove relevance by demonstrating "a reasonable belief *supported by objective evidence* for requesting the information" and that "suspicion alone was not enough."

The Board found that the union's email merely assumed that the contract *might* include provisions that affect unit employees' terms and conditions of employment. It did not state any facts supporting a reasonable belief that the contract actually included such provisions.

The Advice memorandum was also insufficient to establish the contract's relevance. The Advice memorandum only addressed the relationship between the plant and the employer's predecessor, and described details of the contract between the two parties. The union failed to explicitly state that it believed the requested contract, between their current employer and the plant, would contain similar terms to the contract described in the Advice memorandum. Nor did the union's statements provide an objective factual basis for an unstated belief. The mere fact that the employer had taken over security responsibilities from its predecessor only meant that "the unit employees continued to do the same job; it does not mean that they continued to do so under the same contractual terms."

The Board held that a union must have an objective factual basis for believing the requested information is relevant *before* making a request; it cannot use the request itself as a means to confirm its suspicions. The Board also distinguished a Seventh Circuit case upon which the administrative law judge had relied, noting that here, the employer never told the union that it relied upon anything in the contract of its predecessor to establish the new terms and conditions of the guards' employment.

Takeaways

This is one of many types of cases where the outcome could have come out differently depending on the make-up of the Board. Still, the decision presents a good example of how to effectively respond to an information request that appeared outside of the union's responsibilities. The employer did not simply reject the request, which almost always results in the filing of an unfair labor practice charge, but inquired about the reasons the union needed the information.

Oftentimes, the information request will seem like a fishing expedition. The employer's questions about why the union needed the information confirmed that there was no current issue and the union was raising hypothetical problems. Again, this case undoubtedly would have turned out differently had it occurred three years ago. The case does provide a good demonstration about how to negotiate over information requests to determine whether there is a solid basis to provide the requested information.

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