United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 24, 2002

TO : Victoria E. Aguayo, Regional Director
William M. Pate, Jr., Regional Attorney
James A. Small, Assistant to Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Bakery Workers Local 37
(Vons, a Safeway Company)
Case 21-CB-13148

554-1467-0300
554-1475-0100
554-1475-0137-2000
554-1475-6700

This case was submitted for advice on whether the Union violated Section 8(b)(3) of the Act by refusing the Employer's request for copies of collective-bargaining agreements that the Union has with other employers.

We conclude that the Employer has demonstrated the relevance of the Union's agreements with other employers, and therefore the Union violated Section 8(b)(3) by refusing to furnish the Employer with the requested information.

FACTS

Vons (the Employer) operates a chain of supermarkets, and part of the operation includes a commercial bakery. Bakery Workers Local 37 (the Union) represents a unit of employees employed by the Employer in its commercial bakery. The most recent collective-bargaining agreement between the parties was due to expire on March 10, 2002.[1] That agreement does not contain a most-favored-nation clause.

In early January, in preparation for negotiations for a new collective-bargaining agreement, Employer Director of Labor Relations Mahan called Union President Lowry. Mahan requested a copy of all collective-bargaining agreements the Union had with various other bakery operations. Lowry denied the request and stated that the Union had never received such a request before. Mahan explained that he needed to see what kind of agreements the Employer's

[1] All dates are in 2002.

competitors had with the Union in order to prepare for bargaining. Mahan suggested that Lowry check with his counsel before denying the request and Lowry agreed.

About two weeks later, Mahan called Lowry and repeated his request, which Lowry again denied. Lowry informed Mahan that he had checked with counsel and that his attorney advised him that he did not have to provide the information.

On or about January 31, Mahan once again asked Lowry for the collective-bargaining agreements and Lowry again denied the request. Lowry asked for something in writing and on February 4, during an unrelated meeting, Mahan gave Lowry a written request for the information. Later that day, Mahan asked Lowry whether he had read the letter and whether he was going to provide the information. Lowry said he read the letter but would not provide the information.

The Employer asserts that it needs to review the Union's contracts with other bakeries in order to prepare for bargaining. The Employer is considering requesting a most favored nations clause in its contract with the Union, and wants to investigate whether the Union has most favored nations clauses with other bakeries. The Employer is also considering changing its pension plan, and wants to learn what the Union and other employers have agreed to. For instance, it wishes to know in which pension plans the Union members are enrolled, employee contribution rates, what employer contribution rates are competitive, whether a company pension plan would be acceptable, and whether there is a multi-employer pension plan available for the Employer to join. The Employer also wants to see whether the Union has agreements with any multi-employer groups the Employer may join to offer its employees portability with regard to seniority, benefits, vacation, etc. Finally, the Employer states that in order to remain competitive and keep a satisfied workforce, it needs to see the other contracts for a sense of the industry standards on wages, working hours, schedules, and benefits carried by other employers.

Sometime between February 4 and March 5, the Union submitted to the Employer an initial proposal for preliminary negotiations. The Union attached to its proposal a copy of a Memorandum of Agreement between the Union and Interstate Baking Company (IBC) with an expiration date of March 31, 2001.[2] The Union's proposal

---

[2] IBC is one of the competing bakery operations that the Employer referred to in its February 4 written request to the Union.

itself included two references to the IBC agreement: Paragraph 22 which pertains to wages, and Paragraph 26 which pertains to pensions.

ACTION

We conclude that the Union violated Section 8(b)(3) by refusing the Employer's request for copies of the Union's collective-bargaining agreements with other employers. Therefore, the Region should issue complaint, absent settlement.

A party engaged in collective bargaining must provide, upon request, information which is relevant for the purpose of contract negotiations or contract administration.[3] Requested information concerning the bargaining unit itself is presumptively relevant and must be produced unless the other party rebuts the presumption.[4] A party seeking extra-unit information must establish the relevance of that information without the benefit of any presumption.[5] The Board applies a "liberal, discovery-type" standard to determine whether requested information is probably or potentially relevant to statutory duties.[6]

A labor organization's duty to furnish information pursuant to Section 8(b)(3) of the Act is parallel to that of an employer's obligation to furnish information pursuant to Section 8(a)(1) and (5) of the Act.[7]

In this case, since the Employer's request for copies of all contracts the Union has with the Employer's

---

[3] NLRB v. Acme Industrial Co., 385 U.S. 432, 434 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152-153 (1956); Barnard Engineering Co., 282 NLRB 617, 619 (1987).

[4] E.I. DuPont de Nemours and Co. v. NLRB, 744 F.2d 536, 538 (6th Cir. 1984); Proctor Mechanical Corp., 279 NLRB 201, 204 (1986).

[5] E.I. DuPont, 744 F.2d at 538; NLRB v. Associated General Contractors, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981).

[6] Pfizer Inc., 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985), citing NLRB v. Acme Industrial Co., 385 U.S. 432, 437 (1967).

[7] California Nurses Ass'n, 326 NLRB 1362, 1366 (1998) (citations omitted).

competitors concerns extra-unit information, the Employer must prove that the information is relevant to contract administration or the parties' collective-bargaining negotiations. The Employer has made a sufficient showing that the Union's contracts with other employers is relevant and may provide useful assistance to the Employer in shaping its contract proposals. The Employer has enumerated several issues it wishes to pursue during negotiations with the Union where it would benefit from reviewing the Union's contracts with other employers. For instance, the Employer would learn what its competitors and the Union have agreed to regarding pensions, wages, benefits, and scheduling. The Employer, as stated, can also determine whether it wants to propose a most favored nations clause after reviewing those other contracts. In light of the "liberal, discovery-type" standard for determining the relevance of information requested during bargaining, we conclude that the Employer has sufficiently demonstrated the nexus between the other contracts and its formation of bargaining proposals which will further the Employer's professed interest in remaining competitive while maintaining a dedicated and satisfied workforce.

Since a union's obligation to provide information is parallel to an employer's, the Board's decision in Somerville Mills[8] is instructive. In that case, the Board found that the employer violated Section 8(a)(1) and (5) by refusing to provide the union with copies of the employer's bargaining agreements at its other unionized locations. The Board affirmed the ALJ's conclusion that the contracts were relevant based, in part, on the similarities of the Employer's other bargaining units and the employer's acknowledgment of the relevance of its contracts at other facilities by requesting the union's contracts with other employers.[9] In this case, where the Employer is seeking comparison of its unit employees with other units of employees that probably have similar skills and jobs classifications and are represented by the same Union in the same industry and locale, the agreements covering those employees are similarly relevant.

Finally, since the Union submitted a proposal to the Employer which refers to portions of an agreement with another employer (IBC), the Union has at least placed "into issue" the terms of the IBC agreement.[10]

---

[8] 308 NLRB 425 (1992).

[9] Id. at 440-441.

[10] See Teamsters Local 688 (Coca-Cola Bottling), 302 NLRB 312 (1991) (the union placed "into issue" an agreement with

In sum, the Region should issue complaint, absent settlement, since the Employer has shown that the Union's collective-bargaining agreements with other employers may be relevant to the parties' collective-bargaining negotiations.

B.J.K.

---

the employer's competitor when it asked whether or not the employer would accept that agreement).