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

Advice Memorandum

DATE: October 20, 2005

TO : Wayne Gold, Regional Director
Region 5

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

SUBJECT: Hyatt Hotels Corp., et al.
Cases 5-CA-32361, et seq.

530-6067-6001-8000
530-6067-6033
530-6067-6033-2500
530-6067-6033-4000
530-6067-6033-6000

This case was submitted for advice as to whether the Employers violated Section 8(a)(5) by: (1) furnishing the Union with information in paper form where the Union requested it in electronic form; and (2) providing OSHA logs with names of non-unit employees redacted in the absence of a showing of relevancy by the Union.

We conclude that the Employer did not unlawfully refuse to provide the requested information in electronic form under extant Board law because providing the information in paper form was not so burdensome as to impede the bargaining process. Although the Union argues that the information in paper format is burdensome to use, current Board law does not take into account whether it is burdensome to use information, only whether it is burdensome to receive or obtain it. However, even assuming that burdensome use of information is a relevant factor, the information furnished here in paper form was not so burdensome to use as to have impeded the bargaining process. Finally, we conclude that the Employer violated Section 8(a)(5) by providing OSHA logs with names of non-unit employees redacted, because OSHA regulations require the disclosure of complete, unredacted logs to authorized employee bargaining representatives.

FACTS

The Charged Party Employers[1] are hotel chains each owning several individual hotels. The involved hotels have collective-bargaining agreements that fall into one of three categories: (1) between a charged party corporation and a local union of UNITE HERE (herein the International or the Union); (2) between an employer association and a local union; and (3) between an individual hotel and a local union. Bargaining units typically include employees

[1] The Charged Party Employer chains are Hyatt Hotels Corp., InterContinental Hotels Group, Starwood Hotels and Resorts Worldwide, Inc., Marriott International, Inc., and Hilton Hotels Corp.

in front desk activities, food and beverage service, housekeeping, and maintenance.

On either August 20 or 24, 2004,[2] the International sent a request for information to each Employer's Vice President of Human Resources requesting information for various specified hotels. On or around August 24, under separate cover, the International requested the same information from the general manager of each hotel. The International requested the following information:

1. A list of all bargaining unit employees currently employed, including the employee's name, date of birth, date of hire, job title, department, classification, social security number, sex, ethnicity, and hours worked between July 1, 2003 and June 30, 2004 (hereinafter, Hiring Data).
2. [A]ny documents, including but not limited to corporate policies, correspondence, and memoranda relating to cleaning standards for guest rooms … .
3. Copies of the Company's Illness and Injury Logs (OSHA forms 200 and 300) for each property listed below for the past 5 calendar years and the current year (1999-present). In accordance with OSHA Standard 1904.35 these copies must be complete (no names removed) and must be delivered to me (at the address specified below) by the end of the next business day (after today).[3]
4. A description of all disability claims by bargaining unit members in the properties listed below during the past 5 years and the current year (1999-present) … .
5. Information regarding your Workers' Compensation insurance programs, including the financial experience for the last three (3) calendar years and 2004 to date (2001 to present), and any analysis by the insurance carriers or 3rd party administrators of this experience…

The letter continued that the International was entitled to the information under both the NLRA and OSHA, and indicated

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[2] All dates are in 2004 unless otherwise indicated.

[3] The OSHA Logs contain the following information: date of case; location of incident (e.g. "guest room #221", etc.); nature of injury (e.g. "strain", "laceration", etc.); part of body (e.g. "back", "hand", etc.); indication of whether case involved days of either lost-time or "light-duty" assignment; if it involved either of those consequences, the number of days.

that the International has received authorization to make the request from, and was acting as the authorized representative of, the local union bargaining agent of each property. It further stated:

> [f]or those items in this request that the company maintains electronic records, please provide the information electronically either by mailing a computer disk to the address below or by e-mailing the information to the Union. We request that at a minimum the information requested in Item 1 be provided electronically either in Microsoft Excel or a text-delimited format. Computer disks and paper items should be mailed to [the International Union]. (Emphasis in original.)

The International specified in its request to the Employer that it needed the information to investigate possible grievances related to the rights and treatment of migrant workers, diversity in the workplace, and worker health and safety. During the investigation, the International subsequently raised various reasons for needing the requested information. For example, the International indicated that it needs the OSHA Logs to determine the types of hazards associated with various job positions within a particular hotel, among hotels in a particular hotel chain, and among various hotel chains. In addition, it claimed that information in the Hiring Data, such as employees' genders, ages, and ethnicities, would allow it to assess the hotels' commitment to workplace diversity.

On September 13, the International renewed its request for the information. On September 21, each Employer chain questioned the relevancy of the information to the International and to collective bargaining between the parties. On October 4 and 15, the International again requested the information and referred to its initial letter as explaining relevancy. Between mid-October and early November, around half of the hotels responded directly to the local unions, generally providing them with copies for the International. Each responding hotel agreed to provide the Hiring Data, the hotels' cleaning standards, and OSHA Logs containing bargaining unit employees' names only. These hotels agreed to produce the disability insurance and workers' compensation documents, as well as names of non-unit employees contained in the OSHA logs, if the local union explained how this information was relevant to its statutory duties.

On various dates between November 2004 and April 2005, many hotels provided some information directly to the local unions rather than to the International as requested.[4] The documents all included incomplete OSHA Logs, typically with non-unit employee names redacted. The majority of all information provided was in paper form, although it appears that much of it was derived from an electronic source such as a database or a word processing program.[5] Only one hotel provided disability insurance or workers' compensation information.

According to the International, the length and amount of entries in each Hiring Data document varies. Most of these documents range from around 4 to 12 pages in length and contain around 40 entries per page. The shortest of the furnished Hiring Information documents is around 1-½ pages with 48 entries, and the longest document is around 500 pages with approximately 19,000 entries. Each OSHA log appears to be around two to four pages, with some exceeding five pages, in length.

Finally, the International has asserted that some hotels are contractually required to electronically transmit bargaining unit information, and one hotel has tentatively agreed in contract negotiations to a clause requiring the electronic transmission of dues information.

ACTION

We conclude that the Employer did not unlawfully refuse to provide the requested information in electronic form under extant Board law because providing the information in paper form was not so burdensome as to impede the bargaining process. Although the Union argues that the information in paper format is burdensome to use, current Board law does not take into account whether it is burdensome to use information, only whether it is burdensome to receive or obtain it. Finally, even assuming

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[4] The Region has determined that the Employers were obligated to provide the information directly to the International once they received written authorization from the local unions designating the International as their representative for this purpose.

[5] The Employer agrees that the majority of information was provided in paper form, but also asserts that the hotels have provided the information in paper, electronic, or (where available) in both formats, and that where a hotel had the requested information in electronic form, that was the format in which it was generally furnished.

that burdensome use of information is a relevant factor, providing the information here in paper form was not so burdensome to use as to have impeded the bargaining process. We conclude, however, that the Employer violated Section 8(a)(5) by providing OSHA logs with names of non-unit employees redacted because OSHA regulations require the disclosure of complete, unredacted logs to authorized employee bargaining representatives.

I. The Employer Did Not Unlawfully Refuse to Provide Requested Documents in Electronic Form.

An employer is not obligated to furnish relevant information in the exact form requested so long as it "is made available in a manner not so burdensome or time consuming as to impede the process of bargaining."[6] Thus, an employer may not subject a union to a burdensome procedure of obtaining desired information where it may have such information available in a more convenient form.[7]

In determining whether a party's method of obtaining information is burdensome in light of available alternative means, the Board considers several factors: the volume and nature of the information;[8] whether the alternative

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[6] See Roadway Express, Inc., 275 NLRB 1107, 1107 & n.4 (1985) (no violation where employer refused to give union a copy of a one-page letter and offered to allow the union to view the letter); Cincinnati Steel Castings Co., 86 NLRB 592, 593 (1949).

[7] See American Telephone and Telegraph Co., 250 NLRB 47, 53 (1980), enfd. 644 F.2d 923 (1st Cir. 1981); Kroger Co., 226 NLRB 512, 513-14 (1976) (fact that union had independent access to the requested information under the collective bargaining agreement did not relieve employer's statutory duty to furnish it).

[8] See Carpenters Local 35 (Construction Employers Assn.), 317 NLRB 18, 22 (1995) (violation where union made member handcopy, rather than provide photocopies of, hiring hall records for a 6-month period); Teamsters Local 891 (Northern Air Freight), 283 NLRB 922, 925 (1987) (violation because there was a valid claim of difficulty in handcopying a twelve-page document); Union Switch & Signal, Inc., 316 NLRB 1025, 1032 (1995) (violation because it would be laborious to copy twelve pages of complex tabulations); American Telephone and Telegraph Co., 250 NLRB at 51 (most of the requested records exceeded 50 pages in length). But see Roadway Express, Inc., cited above in footnote 6; Abercrombie & Fitch Co., 206 NLRB 464, 467

procedure would give the recipient greater assurance of accuracy and completeness of the information;[9] comparative costs and convenience to both the provider and recipient of the information using the alternative procedure;[10] whether grievance meetings would be shortened and the entire grievance process expedited and facilitated by use of the alternative procedure;[11] and whether the employer conducts its other business affairs in the same manner using that procedure.[12]

For example, except in "unusual cases," employers must generally furnish documentary evidence by photocopy as there exists an "almost universal practice of most businesses of using photocopying equipment in copying documents."[13] Thus, an employer may not require a union to go through a burdensome process of handcopying information when it could easily provide photocopies. However, the

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(1973) (no violation where employer allowed union to view but not photocopy uncomplicated records).

[9] See Construction Employers Assn., 317 NLRB at 23 (handcopying would yield a less accurate and reliable product than mechanical reproduction); Union Switch & Signal, Inc., 316 NLRB at 1032 (1995) (information difficult to copy with complete accuracy); American Telephone and Telegraph Co., 250 NLRB at 54 (handcopying entailed far greater potential for error, with management representatives reading documents to union personnel, and with union personnel taking notes and then transcribing and typing the notes).

[10] See American Telephone and Telegraph Co., 250 NLRB at 54 (photocopying would neither subject union officials to time-consuming and laborious notetaking, handcopying, and transcribing nor cost the employer much more money, as its supervisors had to spend hours watching union officials handcopy records); Union Switch & Signal, Inc., 316 NLRB at 1033 (expense of photocopying around twelve summary pages was not prohibitive).

[11] See American Telephone and Telegraph Co., 250 NLRB at 54 (refusal to provide photocopies delayed a grievance proceeding by a month).

[12] See id. (requiring union to write down requested information “scarcely comport[ed]” with the employer’s business practice in the conduct of its other affairs).

[13] Id. at 47 (noting that the Board must keep abreast of significant developments in industrial life).

Board has not imposed a per se rule requiring the furnishing of photocopies.[14]

We conclude that the Employers' providing documents in paper form is not so burdensome for the Union to receive as to impede the process of bargaining. The paper form information was accurate and complete, was not voluminous except for the hiring data from a few hotels, and was not expensive to provide or receive.[15] Accordingly, absent withdrawal, this allegation should be dismissed under extant Board law.

The Union argues that it is burdensome for it to process and use, as opposed to receive, the information in paper form because it cannot analyze the information in this form, and must engage in the time-consuming task of manually entering it into an electronic database and then reorganizing it.[16] We reject the Union's argument for two reasons. First, current Board law does not evaluate the burden of a party's subsequent use and manipulation of requested information, only its initial receipt of that information.

Second, even assuming that the subsequent use of information is and/or should be a consideration under Board law, the vast bulk of the information supplied here on paper was not burdensome for the Union to readily use. The Union did not need to retype the vast majority of these documents because it could easily compile most of the comparative data that it sought through a fairly cursory

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[14] Id. (noting the possibility of exceptions for unusual cases due to lack of photocopy equipment or undue inconvenience); see also Roadway Express, Inc., cited above in footnote 6.

[15] We also note there is insufficient evidence that the Employers acted in bad faith when they refused to supply much of this information in electronic form. Where some of the hotels possessed the requested information in electronic form, they furnished the information in that form or in both paper and electronic form.

[16] For example, the Union wants to organize the OSHA Logs based on job category and injury, and the Hiring Data based on the various categories of information therein. The Union claims that the documents are essentially useless unless it can organize this data to facilitate these analyses and that it has already spent hundreds of hours manually transcribing the documents into an electronic database.

perusal of the documents. For example, the five years of OSHA logs total anywhere from around 10 to 25 pages, and most of the hiring information documents range from 4 to 12 pages. The Union would not be forced to spend a burdensome amount of time locating information within those documents.[17] Even assuming that the Union must type a more lengthy document, such as the 500-page Hiring Data document, into electronic form in order to more efficiently analyze the data therein, the requests were not made pursuant to outstanding grievances. Thus the form in which the information was provided has no immediate impact on the grievance process. For example, the Union was not under a contractual time limit to file a grievance or proceed to the next level of the grievance procedure.

Moreover, we note that there is no "universal practice" of electronically transmitting documents as there is with photocopying. The fact that Union locals are seeking to contractually require Employer hotels to electronically transmit various documents indicates that even the Employers here have no such consistent practice.

II. The Employer Unlawfully Refused to Provide Unredacted OSHA Logs, even Absent a Showing of Relevancy, because OSHA Regulations Mandate the Disclosure of Unredacted Logs.

A party engaged in collective bargaining must provide, upon request, information which is relevant for the purpose of contract negotiations or contract administration.[18] Information regarding terms and conditions of employment of employees actually represented by a union is presumptively relevant and necessary, and is required to be produced.[19] However, when a union requests information about employees

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[17] See Leland Stanford Junior University, 262 NLRB 136, 142 (1982), enfd. 715 F.2d 743 (9th Cir. 1983) (no violation where union could conveniently formulate a seniority list based upon information previously furnished by the employer). We note that we consider burdensomeness here based on the Union's use of a particular Employer hotel's set of documents, not on the Union's combined use of document sets from all Employer hotels, because that information involves many separate units.

[18] NLRB v. Acme Industrial Co., 385 U.S. 432, 436 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152-153 (1956); Leland Stanford Junior University, 262 NLRB at 138-39.

[19] Proctor Mechanical Corp., 279 NLRB 201, 204 (1986), quoting Bohemia, Inc., 272 NLRB 1128, 1129 (1984).

or operations other than those it represents, the union bears the initial burden of showing relevancy.[20]

Here, the Union did not respond to the Employer's question about the relevancy of OSHA log information concerning non-unit employees. Thus, under normal circumstances, the Employer would be privileged to refuse to furnish that information. However, OSHA regulations clearly require the Employer to provide complete OSHA logs to authorized employee representatives, with all information included and unredacted: "authorized employee representatives have the right to access the OSHA injury and illness records" including the OSHA logs, for any establishment in which the employee or former employee has worked.[21] OSHA regulations add that an employer may not remove names of employees or any other information from the OSHA 300 Logs before furnishing it to a party such as an employee representative. In a letter to the Division of Advice dated September 9, 2005, the DOL OSHA Division confirmed that an "employer must provide access to the entire OSHA 300 Log and may not delete the names and cases of non-unit employees." The DOL OSHA further indicated that the removal of non-union employee names would diminish an employee representative's ability to uncover and prevent safety and health hazards in the workplace. Finally, the Board has found a violation where an employer failed to timely provide a union with requested complete OSHA logs.[22] Thus, we conclude that the Employer unlawfully provided OSHA 300 logs with non-unit employee names redacted.[23]

In accordance with the above, the Region should issue complaint, absent settlement, alleging that the Employer unlawfully furnished OSHA 300 Logs with non-unit employee names redacted, and, absent withdrawal, dismiss the

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[20] NLRB v. Associated General Contractors, 633 F.2d 766, 770 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981).

[21] See 29 CFR 1904.35(b)(2).

[22] See Beverly Health & Rehabilitation Services, 335 NLRB 635, 658 n.32 (2001), enfd. in pertinent part 317 F.3d 316 (D.C. Cir. 2003) (noting that OSHA Logs are available to employees and their representatives on demand, that access is not limited to entries specifically relating to the employee seeking access, and that the data is relevant to safety in the workplace).

[23] The Region has already determined that complaint should issue regarding hotels that have refused to turn over any of the requested relevant information.

allegation that the Employer unlawfully refused to provide requested information in electronic form.

B.J.K.