

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES**

YALE UNIVERSITY

and

34-CA-10550

YALE POLICE BENEVOLENT ASSOCIATION

Lindsey Kotulski, Esq., Counsel for the General Counsel.
Joseph Ambash, Esq., *Seyfarth, Shaw*, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Hartford, Connecticut on March 8, 2004. The Complaint, which issued on November 26, 2003 and was based upon an unfair labor practice charge and an amended charge filed on July 18, 2003¹ and September 29 by Yale Police Benevolent Association, herein the Union, alleges that Yale University, herein Respondent, violated Section 8(a)(1)(5) of the Act by delaying in furnishing the Union with information that it requested, which information was necessary for, and relevant to, the Union as the collective bargaining representative of the Respondent's police officers.

Findings of Fact

I. Jurisdiction

The Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

The Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

The Union has been the collective bargaining representative for the Respondent's police officers and detectives at its New Haven, Connecticut campus for many years. The most recent contract between the parties was effective for the period July 1, 1996 through June 30, 2002. The parties have been engaged in negotiations for a new contract for some time.

Article XXVII of the parties' collective bargaining agreement provides that the unit employees are entitled to twelve sick days a year, which may be accumulated to a maximum of two hundred forty days. To qualify for sick leave, an employee must notify his/her supervisor at least four hours prior to the commencement of his/her shift. The Respondent may, at its

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2003.

discretion, require an employee to submit appropriate medical proof that his/her absence was necessary due to illness or injury, or that the employee is fit to return to work. The contract further states: "Any employee who is found to have obtained sick leave under false pretenses is subject to discipline." In addition, Article XVII, Section 10 of the contract provides: "No disciplinary action shall be issued for any offense known to the University which occurred more than forty five (45) days prior to the date of the disciplinary action." On December 9, 2002, James Perrotti, Respondent's Chief of Police, sent a notice to all of the unit employees reminding them of the requirement that sick leave be employed only when an illness or injury required it, but that there was some evidence that some employees were employing sick leave to supplement regularly scheduled time off. The memo stated that the department would continue to monitor sick time use and would notify those employees who appeared to be abusing it: "Should such warnings be unheeded then progressive discipline may be required." There is no evidence that any employee was disciplined pursuant to this notice.

Christopher Morganti, a police officer for the Respondent and chief steward for the Union, testified that in about June he learned from some employees that they were called into meetings with their supervisor and asked about their use of sick leave. They told Morganti that they asked to have Union representation at the meeting, but their requests were denied. Morganti then posted a notice to his members notifying them that if they were called to a meeting where they were questioned about their use of sick leave, they should request Union representation and notify the Union of what occurred. Morganti received a memorandum dated June 24 from one of his officers saying that on June 19 he was questioned by his supervisor about his use of sick time. When he requested Union representation, his request was denied. He was told that a "red flag" went up because he used sick time in conjunction with his regularly scheduled leave, and he replied that he was sick. He was told that notice of the meeting would not be placed in his personnel file. The memo continues (although Counsel for the General Counsel and counsel for the Respondent stipulated at the commencement of the hearing that there is a good faith dispute as to this assertion) that at the conclusion of the meeting his supervisor showed him and another employee a memo stating that the Union members were not allowed Union representation during these meetings. Subsequently, the Respondent allowed the employees to have a Union steward present at these meetings, if requested.

By letter dated June 20 to Perrotti, on the Union's letterhead stating: "Yale Police Benevolent Association, Yale Station PO Box 1232, New Haven Connecticut" Morganti wrote, *inter alia*:

In order to enforce the provisions of our contract, and represent our members, the YPBA is requesting the following information from Yale University:

1. A copy of the General Notice from Chief Perrotti to all department personnel related to a review of sick time records, issued in December of 2002.
2. A copy of the email from Walter Northrop, dated June 13, 2003, sent to all supervisors on the subject of Sick Time.
3. A copy of the Memorandum from Walter Northrop, dated June 16, 2003, to All supervisory personnel, Re: Sick Time Use.
4. A copy of "List of Employees June 9, 2003" issued to all supervisors on or about June 13, 2003.
5. Any other emails, memorandums, letters. or documents related to the employer's

review of sick time records.

5 6. Please answer the following question: Where will the memorandum, generated by the supervisor after meeting with the employee, be stored? Can this memorandum be used in the future as a basis for discipline?

7. Attendance records for all bargaining unit members for the fiscal year (July 1, 2002 to June 2003).

10 The letter concluded by requesting that the information be provided by July 7.

By letter to Morganti dated June 26, and mailed to the Union at the Union's post office address as stated above on the Union's letterhead, James Juhas, Respondent's manager of labor relations, stated:

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This is in response to your June 20, 2003 letter to Chief Perrotti for information regarding a departmental review of sick time paid to bargaining unit police officers.

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1. My understanding is that you already received a copy of this posted memorandum.

2. through 5. You are not entitled to internal communications between Department Administrators and Supervisory Staff.

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6. Internal communications between supervisors and administrators will likely be kept in their respective internal files. If any documents are generated or used for disciplinary purposes, they will be provided to the affected employees and retained in personnel files in accordance with Connecticut statutes.

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7. Attached are attendance records for bargaining unit members for the current fiscal year to date.

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The problem was, as Morganti later learned on July 20, when he received Juhas' June 26 letter, that because the Union had not renewed PO Box 1232 in a timely manner, it was discontinued prior to June 26. Juhas testified that he typically responds to letterhead addresses, as he did in his June 26 response to the Union's information request. In his response he did not answer Requests 2 through 5 because they asked for internal communications which is not appropriate to turn over. On about July 17 his June 26 letter to the Union was returned to him stating: "Box Closed. Unable to Forward. Return to Sender." Juhas then remailed a copy of the June 26 letter to the Union's attorney, and sent another copy to the police department "hoping it would get to Mr. Morganti."

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Morganti testified that the Union has a mail box in the building where the Respondent's Police Department is located, on Sachem Street, and he thought that the Respondent's response would be placed in that box: "almost everything comes through our box in our police station." The Union does not have an office, it only has the mail box at the Sachem Street location, and the PO Box. Morganti has been the Union chief steward for eight years; during the two year period prior to June 20, when he made about twenty requests to the Respondent's Police Department, about 95% of the responses were placed in its mail box at Sachem Street. In fact, on July 2, 1999, he wrote a letter (on Union stationery with PO Box 1232) to Claire Brennan, Respondent's labor relations representative, stating:

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To avoid any missed communication in the future, please make sure that any written

correspondence directed to the Y.P.B.A., its Executive Board Officers, or its Stewards are copied to the union mail box cabinet located below the union bulletin board at 98-100 Sachem Street.

5 Brennan was not involved in the sick time dispute between the Union and the Respondent and Juhas testified that he had not seen the 1999 letter to Brennan at the time of his June 26 letter and was not dealing with the Union in 1999. His office is about a half mile from the Sachem Street location and in about June, he was not aware that the Union had a mail box at that location. Morganti testified that he could not testify with any degree of certainty whether Juhas
10 had previously responded to a Union letter to the Union's mail box at Sachem Street.

As stated above, because of the delay caused by the Union's discontinued post office box, the Union did not receive Juhas' June 26 letter until July 20. The Union did not respond to Juhas' letter until September 3, when Morganti wrote to Juhas, with a new PO Box number on
15 its letterhead:

The Y.P.B.A. is in receipt of your response, dated June 26, 2003, to our information request which was dated June 20, 2003; regarding the police department's review of sick time paid to bargaining unit police officers.
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The numbered items below are keyed to the union's original information request:

1. The Y.P.B.A. does not have a copy of Chief Perrotti's General Notice to all personnel related to a review of sick time records posted in December of 2002. Please provide a copy to the union.
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2 through 5: Please explain why the union is not entitled to this information, which is relevant and was shown to some members during their meetings with supervisors.

6. Your answer to this item was unresponsive to the questions as stated. The questions are related specifically to the sick time interviews held by direction of Mr. Northrop. Please answer the following questions: Where will the memorandum generated by the supervisor after meeting with the employee, be stored? Can this memorandum be used in the future as a basis for discipline?
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7. Thank you for this information.
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NEW REQUEST

8. Please provide a copy of each memorandum generated by each supervisor who met with the employees named on the "List of Employees June 9, 2003." This memorandum memorialized the employee's response to questions asked by the supervisor related to their use of sick time.
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This request is made without prejudice to the union's right to file subsequent requests. Please provide the information by September 17, 2003. Please deposit all information response in the union mailbox, located in the squad room at 98-100 Sachem Street. If any part of this letter is denied or if any material is unavailable, please state so in writing.
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Morganti testified that he did not respond earlier to Juhas' misdirected letter because when he received the letter he had already filed an unfair labor practice charge with the Board (regarding the Respondent's alleged refusal to allow the employees Union representation during the
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meetings about their use of sick time) and had an appointment with the Board agent investigating the matter. The affidavit given to the Board dated July 30, states, *inter alia*:

5 After the charge was filed I received a response from the Employer dated June 26, 2003, which was mailed timely but was misdirected in the mail at Yale so I didn't receive it until about July 20, 2003. Since I had an appointment with the Board Agent today I have not responded to the Employer's letter. I will promptly respond.

10 Juhas responded to Morganti's September 3 letter on September 30², stating:

Enclosed are documents requested in your letter of September 3, 2003, specifically:

1. Memo from Walter Northrop dated June 12, 2003 regarding sick time use.
- 15 2. The list of employees dated June 9, 2003 redacted to exclude the names of non-bargaining-unit member.
- 20 3. Copies of the memos generated by supervisors in response to the June 12, 2003 memo.

While we are not aware of any facts to support the allegations that these items were shown to bargaining unit members, we are providing them now to clarify the lack of merit to the above referenced case. [The unfair labor practice charge referred to above.]

25 Also enclosed is a copy of the December 9, 2002 memo from Chief Perrotti to all employees, which you had previously received.

30 As you had been previously informed, the memos (item 3, above) will be maintained in the administrators and/or supervisors' files. They will not become part of the bargaining unit members' personnel files and will not be used as the basis for progressive discipline.

IV. Analysis

35 The sole allegation herein is that since on or about June 20 and September 3, the Respondent delayed in furnishing the Union with the information that it requested by letter of June 20, in violation of Section 8(a)(1)(5) of the Act. The requested information related to the meetings that the Respondent was conducting with unit employees regarding whether they were improperly using sick leave in conjunction with other leave in order to extend their absence from work. This information was clearly relevant to the Union as the collective bargaining representative of these employees. The duty to furnish relevant information also requires the employer to furnish it in a timely manner. *Gloversville Embossing Corp.*, 314 NLRB 1258, 1265 (1994). The case law on the subject indicates that the law is violated when the delay is caused solely by the Respondent. In *Good Life Beverage Co.* 312 NLRB 1060, 1062, fn. 9 (1993), the Board stated: "Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." In evaluating the promptness of the response, the Board looks at the complexity and extent of the information as well as its availability, and the difficulty of retrieving it. *West Penn Power Company*, 339 NLRB No. 77

50 ² Beginning in early September there was a campus wide strike at the facility.

(2003). Other cases speak of “foot dragging” on the information request, *Quality Engineered Products Co., Inc.* 267 NLRB 593, 598 (1983), “sustained inattention” to the information request, *United States Postal Service*, 276 NLRB 1282, 1288 (1985), and a responsibility to respond to a relevant request with “reasonable dispatch,” *Civil Service Employees Association, Inc.*, 311 NLRB 6, 9 (1993).

Counsel for the General Counsel, in her brief, argues that the violation herein is established because the Respondent never fully responded to the Union’s request in its June 26 response, and the Respondent “...never gave the Union an explanation for failing to comply with the Union’s request for 3 ½ months. Nor did it present any evidence at trial justifying its delay in furnishing the requested information.” I disagree. Juhas responded to Morganti’s request within six days. Although Morganti was not satisfied with the response, principally because Juhas claimed that the Union was not entitled to the internal memoranda requested in Items 2 through 5, Juhas’ position on these items is certainly arguable as these items may be confidential memoranda among Respondent’s agents and supervisors. I found both Morganti and Juhas to be credible witnesses. In order to find that the Respondent unlawfully delayed responding to the Union’s June 20 request, I would have to find that Juhas purposely mailed his June 26 letter to the discontinued PO Box, knowing that this would delay the receipt of his response. I cannot do so. Juhas testified that he was unaware of Morganti’s 1999 letter to Brennan and was unaware of the Union’s mail box at Sachem Street, and Morganti testified that he could not recollect any prior response from Juhas to the Union’s Sachem Street mail box. Further, Juhas responded to Morganti’s second request within twenty seven days, which would not be considered an improper delay, especially considering the campus-wide strike that was occurring at the Respondent’s campus at the time. I would note that it is somewhat disingenuous for Counsel for the General Counsel and the Union to allege that Juhas’ response was delayed when Morganti waited six weeks after receiving Juhas’ response before making his second request, although in his July 30 affidavit to the Board he stated that he would respond “promptly.” Even if Juhas should have provided the Union with all of the information it initially requested, as he did in his September 30 letter, the only delay attributable to the Respondent was twenty seven days, and that can be partially attributable to contending with the campus wide strike. Regardless, it was less of a delay than is attributable to the Union in making its second request six weeks after receiving the Respondent’s response. I therefore find that the evidence establishes that the Respondent made a reasonable good faith effort to respond to the Union’s request as promptly as possible, *Good Life Beverage, supra*, and that the General Counsel has failed to establish that the Respondent purposely delayed responding to the Union’s request, and I therefore recommend that the Complaint be dismissed in its entirety.

Conclusions of Law

1. The Respondent Yale University has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not violated the Act as alleged in the Complaint.

On these findings of fact, conclusions of law and on the entire record, I hereby issue the following recommended³

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ORDER

Having found that the Respondent has not engaged in the unfair labor practices alleged in the Complaint, the Complaint is hereby dismissed in its entirety.

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Dated, Washington, D.C.

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Joel P. Biblowitz
Administrative Law Judge

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³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.