

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

Advice Memorandum

DATE: April 28, 1997

TO : Richard L. Ahearn, Regional Director
Region 9

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

SUBJECT: Cabell Huntington Hospital
Case 9-CA-34228-2

This Section 8(a)(5) and (1) case is submitted for advice as to whether the Employer violated the Act by failing to supply the Union with information allegedly necessary to investigate and process a grievance concerning the Employer's refusal to place an employee in a cashier's position, because the employee failed a calculator test. The Union requested the following information: (1) a copy of the job description for the cashier position; (2) a copy of the job posting for the cashier position; (3) a copy of the calculator test administered to applicants for the cashier position; (4) a copy of the test scores for all the applicants; (5) a copy of all applicants' completed tests; and (6) a copy of all documents, including notes and interviews, used to deny the cashier position to any applicants.

We conclude that the Region should allege that the Employer violated Section 8(a)(5) and (1) of the Act, absent settlement. First, we conclude that all of the information requested by the Union is presumptively relevant in that it concerns a job qualification test that directly effects the terms and conditions of employment of bargaining unit employees. We initially note that the Employer agreed to provide the Union with items one and two. With respect to item three, a copy of the calculator test, we conclude that the Employer did not violate the Act by restricting the Union to reviewing the test, without receiving a copy of it, unless the Region finds that the Employer precluded the Union from bringing an expert third party along to assist in examining the calculator test. With respect to items four, five and six, we conclude that the Employer violated the Act by failing to turn these items over to the Union in that the Employer did not

establish a legitimate and substantial business justification for not supplying the Union with this information. In its defense, the Employer asserts that it cannot supply the Union with these items on the grounds that the information is confidential. However, the Region found that the employees never requested nor did the Employer ever promise the employees confidentiality concerning this information. We conclude, therefore, that the Employer's confidentiality defense is without merit. With respect to item five, all of the applicants' completed tests, we note that if this item includes turning over the test itself, rather than just the answer sheets, the Employer is entitled to protect the integrity of the test by limiting the Union to viewing this information with an expert third party present. However, if the Employer can turn over the answer sheets or other test materials without fully disclosing the test itself, we conclude that the Employer is obligated to do so.

Accordingly, the Region should issue a Section 8(a) (5) and (1) complaint against the Employer, absent settlement, consistent with the analysis set forth above.

B.J.K.