

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

Advice Memorandum

DATE: May 9, 2000

TO : Dorothy L. Moore-Duncan, Regional Director
Region 4

FROM : Barry J. Kearney, Associate General Counsel
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SUBJECT: Bell Atlantic - Pennsylvania, Inc.
Case 4-CA-28922

This case was submitted for advice as to whether the employer is obligated to furnish the names, titles and company addresses of employees who complained to the Employer that a cartoon posted by an employee was sexually offensive.

FACTS

On April 8, 1999, Bell Atlantic (the Employer) gave a one-week suspension to Raymond Myers, a member of CWA Local 13000, for posting a cartoon that the Employer said the employees found sexually offensive. The Union filed a grievance with the Employer on April 15, 1999, and then requested information to investigate the grievance. The information included: (1) a request for the name, title, and company address of each employee who filed an EEO complaint regarding the matter, and (2) a copy of the company's minutes and/or notes from any other interview conducted in conjunction with the investigation. The Union received a response from the Employer on May 17, 1999, in which the Employer refused to give information about the specific employees who filed an EEO complaint regarding the cartoon. The Employer stated that releasing the information would undermine the efficacy of the investigation process and the Employer's legal obligations. It added that the Employer believed that the Union would use the information to harass the complainants. Moreover, it stated that the Employer based its decision on its own independent conclusion that the cartoon was offensive. Finally, it stated that the confidential notes of interviews of witnesses would not be disclosed.

On March 21, 2000, Robert Costagliola, on behalf of Bell Atlantic, sent a letter to Chuck Szymanski, the attorney for the Union. The letter stated that "it is not the Company's intent at present to call, as witnesses in an arbitration proceeding, any of the individuals who contacted the Compliance Office Hotline to lodge

confidential EEO complaints about the cartoon which resulted in the suspension of Unit President Ray Myers."

ACTION

We conclude that the names of employee complainants are confidential.¹ However, the Employer violated Section 8(a)(5) when it failed to bargain an accommodation with the Union.

A party engaged in collective bargaining generally has a statutory obligation to provide, upon request, information which is relevant for the purpose of contract negotiations or the administration of a collective-bargaining agreement.² The standard for relevance is a "liberal discovery-type standard."³ Information which concerns the terms and conditions of employment of bargaining unit employees is deemed "so intrinsic to the core of the employer-employee relationship" as to be presumptively relevant.⁴ This obligation extends to information requested and required by a union to process grievances on behalf of the employees it represents.⁵

The Board's inquiry does not end with a finding of relevance, however. The U.S. Supreme Court has "recognized a limited exception [to the duty to provide relevant information] for information that is confidential in nature."⁶ Under Detroit Edison, where the respondent has

¹ Boyertown Packaging Corp., 303 NLRB 441, 444 (1991) (employer not obligated to provide union with the names of "complainers" as opposed to "all" witnesses).

² NLRB v. Acme Industrial Co., 385 U.S. 432, 435-36 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152-53 (1956); Howard University, 290 NLRB 1006, 1007 (1988).

³ Pfizer Inc., 268 NLRB 916, 918 (1984), *enfd.* 763 F.2d 887 (7th Cir. 1985).

⁴ Aerospace Corp., 314 NLRB 100, 103 (1994).

⁵ Wayne Memorial Hospital Assn., 322 NLRB 100, 102 (1996), and cases cited.

⁶ New Jersey Bell Telephone Co. v. NLRB, 720 F.2d 789, 791 (3d Cir. 1983), citing Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979).

raised a "legitimate and substantial" claim of confidentiality, "the Board is...required to balance the... need for the information against the legitimate confidentiality interest...."⁷

Applying the Detroit Edison test to the facts of this case, we initially conclude that the names of employees who contacted the Employer's confidential EEO hotline to complain about the Union's cartoon are relevant to the Union's processing of the grievance. The identity of these employees is directly related to the suspension of Myers. For example, the Union may want to interview those employees to see if in fact they complained and, if so, the nature of the complaint, or to determine that it was employees and not management who complained.

We further conclude that the Employer raised a legitimate and substantial confidentiality interest in protecting the identity of employees who use the Employer's confidential EEO hotline. Employees had a clear expectation of confidentiality when they made the calls. A brochure distributed to employees in October 1998 assures employees that the EEO hotline is confidential and the Employer asserts, and there is no evidence to the contrary, that it has consistently told employees of the EEO hotline's confidentiality.

Finally, we conclude that the Employer has not met its obligation of offering the Union a reasonable good faith accommodation, under Detroit Edison. The Employer asserts it has no obligation to bargain an accommodation because it does not intend to call the complaining employees as witnesses, and would provide the Union with summaries of the complaints if it changes its mind. However, notwithstanding that fact, the Union still has the right, and the Employer still has the obligation, to negotiate about an accommodation when the information is relevant and confidential. An evaluation of whether the statements made to the hotline were actually employee complaints rather than more neutral observations is necessary to assess the worth of pursuing the grievance and, in any event, information does not lose relevance based upon the Employer's present intention not to call complaining employees as witnesses.⁸

⁷ General Dynamics Corp., 268 NLRB 1432, 1433 (1984) (footnote omitted).

⁸ Cf. Columbus Products Co., 259 NLRB 220 (1981) (employer gave union substance of employee statements regarding subject of the grievance and, although employer promised

Accordingly, complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) when it failed to bargain an accommodation with the Union.

B.J.K.

not to call these employees as witnesses, union in fact was able to interview every employee engaged in alleged misconduct, so employer furnishing names would not enable more effective union representation).