

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

Advice Memorandum

DATE: April 29, 1997

TO : Terry C. Jensen, Acting Regional Director
Region 19

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

554-1475

SUBJECT: UFCW Locals 381 et al. (Albertson's, Inc.)
Cases 19-CB-8010(-1-5), 8043, 8055;
20-CB-10427(-1-5);
21-CB-12254, 12255, 12256, 12257;
31-CB-9960, 9961; 32-CB-4742(-1-5)

These Section 8(b)(3) cases were submitted for advice as to whether about 23 UFCW Local Unions in five Regions unlawfully failed to respond to and/or furnish the Employer with "off the clock" work survey information.¹

In UFCW Local 555 (Albertson's), 36-CB-2056, Advice Memorandum dated September 30, 1996, we concluded that the 9(a) representative Local Union unlawfully failed to provide the Employer with a summary of information contained in the investigative interview forms and employee surveys conducted in late 1995, absent details identifying employees who participated and reasonably expected confidentiality. We further concluded that the Union did not unlawfully fail to attempt to seek information regarding a 1996 survey conducted by a law firm retained by the International because such a request by the Local clearly would have been futile. Advice Memorandum at 10, fn. 21.

Here, as set forth in Region 19's Request for Advice dated April 10, 1997, the only information requests within the 10(b) period were the July 3, 1996, Employer letters to all Charged Party Local Unions requesting results of the survey by the International as well as "any information about alleged off-the-clock work" they had. Although the bulk of the request dealt with the International survey, we conclude that the July 3 letters constitute an appropriate

¹ All involved Regions determined, and we agree, that there is no evidence of a refusal to bargain apart from the alleged failure to furnish relevant information.

request for any information the Local Unions received pursuant to the 1995 surveys they may have conducted. Therefore, consistent with our September 30 Advice Memorandum, any Local Unions which conducted 1995 surveys unlawfully failed to provide the Employer with summaries of that relevant information.

To the extent it was ambiguous exactly what the Employer was requesting of the Local Unions, "it was incumbent" on them "to react in some manner to the request" by, e.g., seeking clarification or informing the Employer they did not conduct 1995 surveys.² Therefore, we conclude that any Local Union which failed to respond at all to the Employer's July 3 request violated Section 8(b)(3), regardless of whether they conducted the 1995 surveys.

Finally, we agree with those Regions which determined that no Local Union unlawfully failed to provide information from the 1996 International survey, consistent with fn. 21 of our September 30, 1996, Advice Memorandum.

B.J.K.

² Ellsworth Sheet Metal, 232 NLRB 109 (1977).