

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

# Advice Memorandum

DATE: November 25, 2003

TO : Richard L. Ahearn, Regional Director  
Region 19

Cathleen C. Callahan, Officer-in-Charge  
Subregion 36

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

SUBJECT: Farmer Bros. Coffee 530-6067-6001-3740  
Case 36-CA-9253-1 530-6067-6067-6100

This Section 8(a)(5) case was submitted for advice on whether the Employer lawfully refused to supply the Union with either W-2 data or wage summaries because the Union allegedly sought this information in bad faith solely to calculate Union dues. We conclude that the Employer violated the Act because the information requested is presumptively relevant, and the Employer has not met its burden of showing that the Union requested the information in bad faith or otherwise is not entitled to the information.

## FACTS

Farmer Brothers Coffee (the Employer) is a coffee wholesaler on the West Coast. The Employer and various Teamsters locals are parties to a collective-bargaining agreement covering 20 separate units effective February 2002 to January 2005. Teamsters Local 206 represents employees working in Oregon.

Under the contract, unit sales employees receive a minimum payment of a weekly base salary. These employees also receive commissions based on their individual sales, and their income stems largely from the commissions. The existing collective-bargaining agreement does not provide for commissions but does include a union-security clause and a dues checkoff clause. The Employer has not implemented dues checkoff because under the agreement, the Employer need not do so unless all locals agree to participate, and not all locals have so agreed. Under the Union's bylaws, union dues are based on an employee's total compensation, including wages and commission income.

In 2001, the Employer supplied the Union with requested W-2 data showing each employee's total

compensation, including commissions. Subsequently, the Employer has denied the Union's requests for recent W-2 information or wage summaries because the Union requested the information to calculate union dues owed under the union-security clause. The Employer instead supplied wage information showing only the average commission received by employees throughout the 20 locals. The Union calculates dues for the unit it represents not as a flat rate, but as a percentage of gross income, currently including the average commission figure supplied by the Employer. However, the Union asserts that these dues calculations are inaccurate because the average commission includes Los Angeles employees' commissions which, as revealed by the 2001 wage data, greatly exceeded those of the Oregon employees.

#### ACTION

We conclude that the Employer violated Section 8(a)(5) because the requested information is presumptively relevant as wage information and also as necessary to administer the contractual union-security clause, and the Employer has not shown that the Union requested the information in bad faith or that the Union otherwise is not entitled to it.

Under Section 8(a)(5) of the Act, the duty to bargain in good faith requires an employer to furnish information requested by its employees' bargaining representative that is necessary to represent the unit employees of that employer.<sup>1</sup> Information regarding unit employees' earnings, which constitute a mandatory subject of bargaining, is "presumptively relevant" to the union's representational duties.<sup>2</sup> That information is, under Section 8(d), at the "core of the employee-employer relationship."<sup>3</sup> Thus, even earnings not covered by a collective-bargaining agreement, such as personal service contracts, are "presumptively relevant."<sup>4</sup>

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<sup>1</sup> NLRB v. Acme Industrial Co., 385 US 432, 436-437 (1967).

<sup>2</sup> MBC Headwear, Inc., 315 NLRB 424, 425-426, 427-428 (1994) (employer's unlawful conduct included refusing to supply union with W-2 forms).

<sup>3</sup> Jano Graphics, Inc., 339 NLRB No. 38, slip op. at 17 (2003). See also NLRB v. Acme Industrial Co., 385 US at 437.

<sup>4</sup> King Broadcasting Co., 324 NLRB 332, 336-337 (1997) (information regarding personal service contracts is

There is no requirement that the information requested be immediately relevant to current negotiations or to contract administration.<sup>5</sup> Where such information is presumptively relevant, the union need not establish any particular need for its use in administering or negotiating a collective-bargaining agreement.<sup>6</sup> The Board also does not speculate about the use a union will make of requested information where it is presumptively relevant.<sup>7</sup>

Here, the commission earnings, like earnings based on personal service contracts, fall squarely within the core subject of employee compensation. Therefore, the Union is presumptively entitled to that information without showing any particular current need.

A union also is entitled to information that relates to a contractual provision. Such information is "demonstrably necessary to the union" to administer the agreement.<sup>8</sup> The Board has repeatedly upheld the relevancy

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presumptively relevant when they contain information regarding wages, hours, terms of employment); Retlaw Broadcasting Co., 324 NLRB 138, 141 (1997) (information regarding personal service contracts covering employment terms and wages are "obviously" presumptively relevant), enf'd, 172 F.3d 660 (9th Cir. 1999); WCCO Radio, 282 NLRB 1199 (1987) (information regarding personal service contracts necessary to represent employees), enf'd, 844 F.2d 511 (8th Cir.1988); KCMO Broadcasting, 145 NLRB 550 (1963) (information regarding personal service contracts needed so that union could "act intelligently as the bargaining representative of the employees").

<sup>5</sup> Retlaw Broadcasting, 324 NLRB at 141-142 (quoting Whitin Machine Works, 108 NLRB 1537, 1538 (1954), enf'd, 217 F.2d 593 (4th Cir. 1954)).

<sup>6</sup> Crowley Marine Services, 329 NLRB 1054, 1060 (1999); Iron Workers Local 207 (Steel Erecting Contractors), 319 NLRB 87, 90 (1995); Washington Post Co., 237 NLRB 1493, 1495-1496 (1978) (citing Whitin Machine Works)).

<sup>7</sup> King Broadcasting Co., 324 NLRB at 337.

<sup>8</sup> A.S. Abell Co., 230 NLRB 1112, 1113 (1977), enf. denied, 624 F.2d 506 (4th Cir. 1980), cited in Contract Carriers Corp., 339 NLRB No. 103, slip op. at 13 (2003).

of requested information with regard to union-security clauses.<sup>9</sup> In particular, the Board held in Mann Theatres<sup>10</sup> that the employer unlawfully refused to supply a union W-2 information, when among the reasons the union advanced for the data was the need to verify members' compliance with a union-security clause. With Board approval, the judge stated that what was requested was "squarely within the category of information which a labor organization must legitimately have to effectively administer its contract," that the union-security clause stabilized the union's representational role, and that the union needed the employees' gross earnings to assess its own financial status.<sup>11</sup>

As in Mann Theatres, the Union has stated that it needs the information for contract administration purposes, i.e. to enforce the union-security clause. The earnings information is needed to enable the Union to fulfill its fiduciary duty to notify unit employees of their obligations under the union-security clause. The Union cannot request any unit employee's discharge for noncompliance with the union-security clause unless it first informs such an employee of his dues obligations, including "the amount of dues owed, the method used to calculate that amount, and the date by which the dues are to be paid."<sup>12</sup> With only an inaccurate earnings average,

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<sup>9</sup> See, e.g., ABF Freight System, 325 NLRB 546, 546, 562 (1998) (union presumptively entitled to employees' addresses to enforce union security clause); MBC Headwear, Inc., 315 NLRB at 425-426, 427-428 (union entitled to information needed to administer the contract, including its union-security clause); Northern Illinois Terrazzo & Tile Co., 290 NLRB 36, 39-40 (1988) (union entitled to information necessary to police the contract, including information related to union-security clause); Viewly, Inc., 204 NLRB 1080, 1082 (1973) (union entitled to information to police the contract, including its union-security clause).

<sup>10</sup> 234 NLRB 842, 842-843 (1978).

<sup>11</sup> Mann Theatres, 234 NLRB at 843.

<sup>12</sup> Philadelphia Sheraton Corp., 136 NLRB 888, 896 (1962), enf'd, 320 F.2d 254 (3d Cir.1963), cited in GreenTeam of San Jose, 320 NLRB 999, 1004 (1996). See also Communications Workers Local 11509 (Pacific Bell), 283 NLRB

the Union cannot fulfill that duty, and therefore cannot effectively police and enforce the union-security clause.

The Employer has presented no evidence to rebut the presumption of relevancy. The Employer instead asserts that the Union is not entitled to the information because the Union allegedly wants the information for dues collection purposes when it was unable to obtain a dues checkoff mechanism for the unit it represents. However, Utica Observer-Dispatch<sup>13</sup> and Radio Station WLOL,<sup>14</sup> cited by the Employer, do not support its assertion that its denial of the information request was lawful.

In Utica Observer-Dispatch, the Board rejected an employer's defense that focused on dues collection. The union there said that it needed employee payroll information, including commission information, to administer the collective-bargaining agreement, to bargain intelligently as to wages, and to police the contract as to dues. The Board stated that merely because "the data was also wanted for dues collection did not detract from its relevance to police the contract and bargain intelligently on wages."<sup>15</sup> In enforcing the Board's order, the Second Circuit stated that the union's request was at most motivated by dual, or "coordinate" purposes, that the union's request was made in good faith, and that the union was entitled to the information.<sup>16</sup>

In Radio Station WLOL, the union requested salary information for employees who were covered by a collective-bargaining agreement with minimum-term compensation provisions.<sup>17</sup> The employer refused, in part alleging that the union's request was motivated by its interest in enforcing its dues requirements which were based, as here, on a percentage of employees' compensation. The ALJ found

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1143, 1144 (1987), enf'd mem., 841 F.2d 1128 (9th Cir. 1988).

<sup>13</sup> 111 NLRB 58 (1955), enf'd, 229 F.2d 575 (2d Cir. 1956).

<sup>14</sup> 181 NLRB 560 (1970).

<sup>15</sup> Utica Observer-Dispatch, 111 NLRB at 63.

<sup>16</sup> Utica Observer-Dispatch, Inc. v. NLRB, 229 F.2d 575, 576-577 (2d Cir. 1956).

<sup>17</sup> Radio Station WLOL, 181 NLRB at 561-562.

that the Employer "produced no evidence in support of its contention that the Union's request for individual wage information was made in bad faith for the purpose of policing or enforcing its own dues requirements. . . ." <sup>18</sup> The Board affirmed his conclusion that the employer unlawfully withheld that information and his reasoning that the earnings information was at the "core of the employer-employee relationship," was presumptively relevant, and that the union was not required to show its precise relevance.

These cases do not support the conclusion that the Employer's refusal here was lawful. As discussed above, the Board has consistently held after Utica Observer-Dispatch and Radio Station WLOL that union security information is relevant to contract enforcement. Thus, here the Union's need to administer a union-security clause presents a valid reason for the information.

In sum, under the above well-settled principles, the Union's request for the commission earnings information is presumptively relevant, and the Employer has failed to meet its burden of an effective rebuttal. The Region should issue complaint, absent settlement, alleging a Section 8(a)(5) and (1) violation.

B.J.K.

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<sup>18</sup> Id. at 562.