

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

## Advice Memorandum

DATE: January 21, 2005

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

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

SUBJECT: Sheet Metal Workers International Association, Local 19  
(Sheet Metal Contractors Association of Central  
Pennsylvania)  
Case 4-CB-9332-1

This case was submitted for advice as to whether the Union violated Section 8(b)(3) by refusing to provide the Employer Association with copies of the Union's collective-bargaining agreements with various sheet metal contractors. We conclude that the Region should issue a complaint, absent settlement, alleging that the information sought was relevant to the parties' negotiations over a successor agreement and that the Union therefore violated Section 8(b)(3) by refusing to provide it.

The Union and the Employer association have been parties to a series of collective-bargaining agreements beginning in the 1970's. The contract immediately prior to the current contract was in effect, by its terms, until the parties executed a successor agreement. That contract had a Most Favored Nations provision and an interest arbitration provision which provided that, in the event of impasse in bargaining a future agreement, the parties' dispute would be submitted to interest arbitration and an agreement would be imposed by the National Joint Adjustment Board (Joint Board).

In May or June of 2004, the parties reached impasse in their bargaining for a successor contract and agreed to submit seven unresolved issues to interest arbitration. During those proceedings, the Union represented to the Joint Board that it had signed agreements with eight other contractors that contained substantially the same terms that the Union was proposing to the Association. This undercut the Association's bargaining position, and the Association asked the Joint Board to obtain from the Union the names of those contractors and the collective-

bargaining agreements executed with them. The Union refused the Joint Board's request for that information.

On July 14, the Joint Board issued a decision directing the parties to execute an agreement incorporating its resolution of the seven issues the parties had submitted to interest arbitration. The parties executed that agreement.

On several occasions after the Joint Board's decision issued, Association representatives reiterated directly to Union representatives their request for the eight contracts the Union had asserted contained terms favorable to it. The Association has stated that it now needs this information to enforce the Most Favored Nations clause in the current agreement and to determine whether any of its employer-members signed agreements with the Union in derogation of their delegation of bargaining rights to the Association. The Union has continued to deny these requests, although on September 21 it sent the Association an unsigned copy of the model contract that the eight contractors purportedly signed.

We conclude that the Union violated Section 8(b)(3) by refusing the Association's initial request for information.

A party engaged in collective bargaining must provide, upon request, information which is relevant for the purpose of contract negotiations or contract administration.<sup>1</sup> The Board applies a "liberal, discovery-type" standard to determine whether requested information is potentially relevant to statutory duties.<sup>2</sup> A labor organization's duty to furnish information pursuant to Section 8(b)(3) of the Act is parallel to that of an employer's obligation to furnish information pursuant to Section 8(a)(1) and (5) of the Act.<sup>3</sup>

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<sup>1</sup> NLRB v. Acme Industrial Co., 385 U.S. 432, 434 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152-153 (1956); Barnard Engineering Co., 282 NLRB 617, 619 (1987).

<sup>2</sup> Pfizer Inc., 268 NLRB 916, 918 (1984), *enfd.* 763 F.2d 887 (7th Cir. 1985), *citing* NLRB v. Acme Industrial Co., 385 U.S. 432, 437 (1967).

<sup>3</sup> California Nurses Ass'n, 326 NLRB 1362, 1366 (1998) (citations omitted).

A party seeking extra-unit information ordinarily must establish the relevance of that information without the benefit of the presumption which applies to information regarding the bargaining unit.<sup>4</sup> However, an employer is presumptively entitled to copies of collective-bargaining agreements with other employers in the same industry if it is seeking that information because of a most favored nations clause.<sup>5</sup>

Here, the information sought is either presumptively relevant pursuant to the most favored nations clause in the parties' prior agreement, or the Association has established its relevancy to the negotiation of a successor contract. Thus, the Union asserted during the interest arbitration proceedings that various issues should be resolved by the Joint Board in its favor because it had negotiated contracts with other contractors containing substantially the same terms being proposed to the Association.<sup>6</sup> The Association was at a disadvantage in responding to that argument since it could not determine the veracity of those allegations, or formulate responsive proposals, absent access to the contracts in question. Therefore, the Employer has sufficiently demonstrated a nexus between the other contracts and its needs in contract negotiations. Moreover, since the Association was entitled to the information for this purpose, it is irrelevant that it may have wanted the information for other purposes as

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<sup>4</sup> E.I. DuPont de Nemours and Co. v. NLRB, 744 F.2d 536, 538 (6<sup>th</sup> Cir. 1984); NLRB v. Associated General Contractors, 633 F.2d 766, 770 (9<sup>th</sup> Cir. 1980), cert. denied 452 U.S. 915 (1981).

<sup>5</sup> See, e.g., Teamsters Local 500 (Acme Markets), 340 NLRB No. 35 (2003).

<sup>6</sup> See Teamsters Local 688 (Coca-Cola Bottling Co.), 302 NLRB 312, n. 2 (1991) (Union violated Section 8(b)(3) by refusing to turn over contract with other employer where, during contract negotiations, parties had referred to terms in that contract and thus placed it in issue).

well, and indeed continued to seek the information after the negotiations concluded.<sup>7</sup>

Accordingly, the Region should issue complaint, absent settlement, alleging a violation of Section 8(b)(3).<sup>8</sup>

B.J.K.

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<sup>7</sup> See Electrical Workers Local 292 (Sound Employers Assn.), 317 NLRB 275, 276 (1995) (employer was entitled to union contracts with other employers in order to police a "most favored nations" clause, notwithstanding that employer's true purpose may have been to gain a competitive advantage over other employers).

<sup>8</sup> Since the Association sought this information prior to the execution of the interest-arbitrated contract, and indeed sought this information for the purpose of negotiating that contract, the information is relevant for purposes of contract negotiation irrespective of whether it would be relevant to enforce the most favored nations clause in the interest-arbitrated agreement. Thus, it is not necessary to determine the effect of Hope Electrical Corp., 339 NLRB No. 113 (2003) (since interest arbitration is a nonmandatory subject of bargaining, repudiation of a collective-bargaining agreement imposed through an interest-arbitration proceeding does not violate Section 8(a)(5)) on a refusal to furnish information violation, which presents difficult questions that no party is raising.