

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

IRONTIGER LOGISTICS, INC.

and

Case 16-CA-27543

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

and

Case 16-CB-8084

IRONTIGER LOGISTICS, INC.

**BRIEF IN SUPPORT OF IRONTIGER LOGISTICS, INC.'S
MOTION FOR SUMMARY JUDGMENT FILED PURSUANT TO
SECTION 102.24 OF THE RULES AND REGULATIONS OF
THE NATIONAL LABOR RELATIONS BOARD AND
MOTION TO TRANSFER AND SEVER THE CASES AND CONTINUE
CASE 16-CA-27543 BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Submitted this 4th day of February, 2011

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STATEMENT OF ISSUE

Was the International Association of Machinists' (IAM or Union) request for information relevant when the Union did not have any evidence of a violation of a Collective Bargaining Agreement (CBA) or when the Union only made a generalized conclusionary statement or request and openly refused to present objective evidence that illustrates, with any degree of precision that its request is relevant?

SUMMARY OF ARGUMENT

The Union's grievance claims that, "The Employer is not placing all available loads on the dispatch board." However, the CBA provides that, ". . . loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers other than IronTiger Logistics. . ." This unqualified language trumps any possible contract violation. The CBA completely and unequivocally contradicts the Union's claim. It's that simple. At no time has the Union submitted any evidence of the contract violation after numerous requests by the Employer; nor is it possible! There are no facts in dispute here! Each of these provisions and other facts will be discussed in detail below.

IronTiger Logistics, Inc. (IronTiger or Employer) never had an obligation to furnish any information. The Union's requests were never made relevant because it only made a conclusionary allegation without any supporting arguments or, more importantly, any facts. Throughout this entire time the Union failed to provide objective evidence of a contract violation and failed to explain its request with any degree of precision. The Union has no facts to support its underlying grievance and no evidence that the requested information is relevant. Illuminating this failure, and the frivolity of its request, the Union changed its position, most recently on

December 9, 2010. The Union's "reformulated" inquiry further illustrates that there is no disputed fact to support the basis for a finding of an unfair labor practice.

The IAM's alleged premise is there is a violation of the CBA; so it says. Secondly, the Union says they need information to properly administer the CBA based on its claim that the CBA has been violated.

What makes this case appropriate for summary judgment is that there is no evidence of a CBA violation and, logically, if there is no evidence of a contract violation there is no obligation to provide any information. Stated another way, for the Union's request to be relevant and create an obligation for the Employer, it must establish or prove the predicate of a contract violation or at least some logical explanation of a contract violation. The Union must prove its request for information is relevant. The Union must prove that the information requested has a tendency to make it more probably that the Employer's action violated the contract. The record here is devoid of any evidence of a contract violation and it follows that there is no obligation to furnish any information.

Therefore, there are two questions:

1. Is the request for information of consequence to this case?
2. Does that which is requested tend, or make it more probable, to prove any facts of a contract violation?

Without a contract violation both questions are answered in the negative.¹ The CBA itself, when reviewed below, will make it clear that the Employer had the unilateral right to assign loads without any qualifiers and that no contract violation can or could occur. Further, a review of the

¹ The Federal rules of Evidence 401 and 401 have codified these concepts: RULE 401. DEFINITION OF "RELEVANT EVIDENCE." "Relevant evidence" means evidenced having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

grievance, the entire CBA, the Union's refusal or inability to articulate any contract violation or any objective evidence of relevancy, makes this case appropriate for which summary judgment should be granted. Further, without a genuine issue of a material fact the request for summary judgment should be granted.

STANDARD FOR RULING ON MOTION FOR SUMMARY JUDGMENT

This Motion is filed pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board. Further, Rule 56(c) of the Federal Rules of Civil Procedure (FRCP) provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Also see *Lake Charles Memorial Hospital*, 250 NLRB 1330 (1979); and *Manville Forest Products Corporation*, 269 NLRB 390 (1984), and U.S. Supreme Court decisions interpreting Rule 56. According to the U.S. Supreme Court in *Celotex v. Catrett*, 477 U.S. 317 (1986), FED.R.CIV.P. 56(c):

mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof.

Id. At 322-23. The burden then shifts to the non-moving party, which must "go beyond the pleadings" and by affidavits "or by the 'depositions, answers to interrogatories and admissions on file' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324. The

“mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby Inc.* 477 U.S. 242, 247-48 (1986) (emphasis omitted). “A metaphysical doubt as to the material facts” is insufficient to defeat a motion for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). When the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is not a genuine issue for trial. *Matsushita*, 475 U.S. at 587.

STATEMENT OF FACTS

IronTiger Logistics, Inc. is a company that transports trucks to a location for its customer, TruckMovers.com, Inc. (TruckMovers). In turn, TruckMovers’ customers are Volvo/Mack, Inc. and Navistar, Inc. IronTiger has two groups of union employees, one that sets up the truck for transportation as yard employees and the second group as drivers. There are four terminals that operate separately under the same Master CBA with the International Association of Machinists (IAM or Union). Those locations are:

1. Dublin, Virginia
2. Macungie, Pennsylvania
3. Springfield, Ohio
4. Garland, Texas

Only the drivers are involved in this dispute between the Employer and the IAM. There are three people involved in this dispute: Boysen Anderson, the International Representative for the IAM, Tom Duvall, the President of IronTiger, and Tom Jones, the outside labor and employment attorney for IronTiger. All three individuals are involved in the negotiation of the CBA and the handling of grievances under the CBA. (*See* Affidavit of Tom Jones, paragraph 1, attached.).

All four units of the IAM were voluntarily recognized by the Employer based on a card check without an election. The CBA was first negotiated at the first terminal, Dublin, Virginia, and eventually applied to all four terminals. The Employer and the Union agreed to a dispatch system which utilized a kiosk as its dispatch board. Boysen Anderson was directly involved in negotiating this system, which he asked to be made part of a “Letter of Agreement” and as the new terminals became operable and part of IronTiger that “Letter of Agreement” then applied and eventually it applied to all terminals. (*See* Affidavit of Tom Jones, paragraph 2, attached.).

TruckMovers has the business contracts with Volvo/Mack, Inc. and Navistar, Inc. Said Agreements limit the number of loads that TruckMovers, Inc. can give to any one carrier, including IronTiger. Boysen Anderson knew all of these restrictions and it is why the parties negotiated the “Letter of Agreement” as well as its application to the four terminals. Therefore, TruckMovers gets the assignment from Volvo/Mack and Navistar and, in turn, assigns the work to carriers, IronTiger included. TruckMovers does not have any labor contract with any union and is non-union and is located in Kansas City, MO. (*See* Affidavit of Tom Jones, paragraph 4, attached.).

TruckMovers assigned work to IronTiger. Therefore, IronTiger’s customer is TruckMovers. For example, on any given day, the terminal manager at one of the four terminals calls up TruckMovers in Kansas City, MO and tells them he has 10 drivers for dispatch, however, it may be more or less. The dispatcher then electronically posts 10 loads on the kiosk and the terminal manager dispatches the IAM drivers at that location. This same system of assignment is applied uniformly at each of the above four terminals and has since the opening of each of the terminals. (*See* Affidavit of Tom Jones, paragraph 5, attached.).

The underlying grievance giving rise to the Union's request for information is dated March 29, 2010 and it provides "Nature of Grievance: The Employer is not placing all available loads on the dispatch board." (See Exhibit 3 attached to Tom Jones' affidavit, paragraph 8.). The Employer responded on April 5, 2010 in part stating, ". . . that the Company is in compliance with the . . . Collective Bargaining Agreement and . . . It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the . . . CBA." (See Exhibit 6 attached to Tom Jones' affidavit, paragraph 9.). Prior to filing this grievance, the Union and the Employer communicated regarding the underlying potential issues involving a CBA dispute.

March 16, 2010 E-mail from Boysen Anderson to Tom Duvall 8:24 am

Tom—once again the company is not complying with the dispatch language in the CBA. Thus the final warning notice from the IAM. So that we are clear ALL AVAILABLE LOADS ARE TO BE PLACED ON THE BOARD FOR DISPATCH. We have an [sic] Agreement and the company will comply.

Boysen

March 16, 2010 E-mail from Tom Duvall to Boysen Anderson 10:54 am

All available IronTiger loads ARE placed on the board for dispatch. If you believe that they are not, please give me some specifics so that I can investigate.

Tom

March 16, 2010 E-mail from Boysen Anderson to Tom Duvall 10:27 am

Tom—don't question me on what I believe; here are the facts, one driver 1 load—two drivers 2 loads—six drivers 6 loads. Enough of the bullshit.

Boysen

March 29, 2010 E-mail from Boysen Anderson to Tom Duvall 10:04 am

Tom—attached you will find a class grievance on the continuing contract violations. Also, this shall serve as the notice to cure the contract provisions breach outlined in the attached grievance, if the Company ignores this notice the Union will proceed on this grievance under Article 20, Section 1.

Boysen D. Anderson

April 5, 2010 E-mail from Tom Duvall to Boysen Anderson 11:33 am

Boysen,

The Company is in receipt of your class action grievance alleging violations of Article 6-Master Dispatch Procedure and Article 7-Return Travel.

The Company respectfully disagrees with your allegations and states that the Company is in compliance with the provisions of Article 6-Master Dispatch Procedures as well as the provisions of Article 7-Return Travel.

Further, concerning your allegations regarding Article 20, Section 1, the Company denies that it has intentionally ignored any of the provisions of the National Master Agreement.

It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the aforementioned Articles. If we are not able to agree then the matter should be submitted to the grievance procedure for determination as set forth and required by Article 20, Section 1.

Regards,

Tom

April 5, 2010 E-mail from Boysen Anderson to Tom Duvall 4:08 pm

Tom,

I am responding to you e-mail excerpts below.

Your e-mail misstates several facts and contrary to your contention and claim the Company are not violating the provisions the in the Union Grievance Report. This is to advise you that the Union rejects your contention and claim. The Union repeatedly warned you of these violations and breach also the Union met with you several time on these issues. You choose to intentionally ignore the Agreement. In short, the Union believes another meeting on these issues will be non productive and will proceed with it's course of actions to correct the contract breach.

Boysen D. Anderson

(See Exhibits 3, 4, 5 and 6, which are true and accurate copies of the e-mails listed above, and are attached to Tom Jones' affidavit, paragraph 8.). On April 12, 2010 the Union requested information, more specifically, eight questions, and on May 7, 2010 the Employer responded to the eight questions. (See Exhibit 7 attached to Tom Jones' affidavit, paragraph 10, which answers the questions and, on page 31, lists the information requested by the Union.). On May 11, 2010 the Union sent a second request for information. The Union filed its first unfair labor practice (ULP) charge in 16-CA-27543 on July 15, 2010 and claimed a violation of Section 8(a)(5) of the National Labor Relations Act (NLRA) for failure to provide the requested information on April 12, 2010 and May 11, 2010. (See Exhibit 8 attached to Tom Jones' affidavit, paragraph 11.). On September 27, 2010 the Regional Director, Martha Kinard, approved the Union's withdrawal of any allegation regarding the April 12, 2010 request but stated she would continue the investigation of the information request dated May 11, 2010 and resubmitted to the Employer on July 30, 2010. (See Exhibit 9 attached to Tom Jones' affidavit, paragraph 12.). On the same date, September 27, 2010, the Employer sent an e-mail to the Union and the Regional Director stating, among other things, that the information sought was irrelevant and why the information requested was irrelevant. (See Exhibit 10, attached to Tom Jones' affidavit, paragraph 13.). On October 12, 2010, the Union responded and, for the first

time, changed its position. Now, unlike any other request, states that “. . . the Company’s history of taking loads off the IronTiger Board and giving these loads to TruckMovers’ drivers makes the information requested by the Union relevant to process such grievances. . .” (See Exhibit 11, attached to Tom Jones’ affidavit, paragraph 14.). The initial grievance states failure to “place all available loads on the dispatch board” and now, or at least in October of 2010, it challenges the removal of loads from the board.

On October 13, 2010, the Employer responded to the Union’s position.

Boysen,

I am responding to your e-mail dated October 12, 2010. You state, “. . . the Company’s history of taking loads off the IronTiger board and giving these loads to Truckmovers’ drivers makes the information requested by the Union relevant to process such grievances.” We are not aware of taking loads off IronTiger’s drivers kiosk and giving a load to a Truckmovers driver or any other driver and any other contract violation. If you believe we removed loads from the IronTiger’s board please provide me with the specifics of your claim so that we can investigate and evaluate your statement of the Company’s history of making these changes. Please tell me when, where, what loads were removed, who was affected and how many times this happened and I will be happy to investigate your claim or claims.

Regarding the labor contract, it has no qualifiers and there is no contract violation. Are you sure of your position? If you do not have any evidence of a contract violation, why did you file the grievance? Are you unsure of your position and is that why you are seeking information at this time because you do not know or have information of a contract violation? Do you need to determine if the grievance has merit?

That all being said, we should still meet, as the Company has previously requested, to discuss your grievance and your request for information. We believe besides the request seeking irrelevant information, your request is ambiguous, overbroad and burdensome and by meeting we hope we can clarify your request and possibly come to some arrangement that can be mutually satisfactory.

Give me a call so that we can meet.

Tom Jones

(See Exhibit 12, attached to Tom Jones' affidavit, paragraph 15.).

On October 25, 2010, the Employer raised this inconsistency and stated:

Boysen:

Again I want to set the record straight; I am not aware of any contract violations and I do not have amnesia. Your statement in your October 12, 2010 e-mail and the underlying grievance are inconsistent. The grievance refers to all loads and the later position states the removal of loads—which is it? And again you can short circuit this entire matter if you tell us of any contract violations. We are again asking for this information so we can process your grievance. If we made a mistake we can rectify those issues quickly and make whatever payment is necessary. Further, your request for information is irrelevant to your grievance and, as important, can't we just meet to discuss the issues and if we can not immediately resolve your issues, which we believe we can, at least we can understand your request, which is also ambiguous, overly broad and an unnecessary burden. The request for information is, at best, confusing. By meeting we can clarify your request and come to an arrangement that can be mutually satisfactory.

Again, I am asking you to give me a call so we can meet. If you don't want to meet regarding this matter, please advise in writing and I will quit asking.

Tom Jones

(See Exhibit 13, attached to Tom Jones' affidavit, paragraph 16.).

On December 1, 2010, the Union filed its first Amended Charge against the Employer alleging that the Employer delayed the providing of information which it believes relevant. On December 7, 2010, the Employer requested a meeting and again stated the requested information is irrelevant. (See Exhibit 4, attached to Tom Jones' affidavit, paragraph 17.).

On December 9, 2010, or eight days after the Union's Amended Charge, the Union wrote to the Employer and stated:

Tom - in response to your email of December 7th, let me try to reformulate my information request to address your concerns.

1. On April 12th, I wrote to you and requested “all e-mails, transcripts, faxes, telecommunications and other documentation to support why . . . units were dispatched to Truckmovers drivers.” (Request #4)

You responded on May 7th by stating: “N/A. Done by system assignment not through email or other written communication.”

What is the “system assignment” you are referring to? How does this “system assignment” distinguish between IronTiger and any other entity (such as TruckMovers) in determining the assignment of dispatches?

2. In what form does IronTiger receive communications from its customers regarding units to be transported? Please provide copies of such communications for all unit orders during the past six months. If the response to this request would be unduly burdensome, please estimate the volume of the response, and we can discuss how the request may be modified so as to lessen or eliminate the burdensome nature of your response.

Boysen D Anderson

(See Exhibit 15, attached to Tom Jones’ affidavit, paragraph 18.). The Employer responded to the Union’s “reformulated” request on December 20, 2010 and it is the last e-mail or communication between the parties or the NLRB Regional Office.

Boysen,

I am responding to your December 9, 2010 e-mail regarding your request for information. Let me say again that the company has complied with the CBA and your quote from it, “all available loads will [have] be[en] placed on one board in the order of importance of delivery.” This practice has been done at all four of our terminals in the same manner and has complied with the CBA. Are you aware of any incident this has not happened in the entire time each of any of the four terminals have been open except the one time or incident in March 2009, which was satisfactorily resolved? Further, you changed your position on your request; first it was all loads and then it was removed loads that you had to clarify recently. Now your most recent e-mail says you are going to again make a change and “try to reformulate my information request.”

Your request for information is confusing and now you limit your request to two concerns. You want to know:

1. What is the “system assignment” you are referring to? How does this system assignment “distinguish between IronTiger” and any other entity (such as TruckMovers) in determining the assignment of dispatches?
2. In what form does IronTiger receive communication from its customers regarding units to be transported? Provide copies of such communications for all unit orders?

Boysen, you know exactly how loads get on the kiosk because we have had that discussion with you numerous times. For examples, as early as our first negotiated CBA, we negotiated this procedure with you and it resulted in the Letter of Agreement (LOA) because of Volvo/Mack’s restrictions placed on TruckMovers. You understood this restriction and it was your request that the LOA not be put in the CBA but rather made a LOA regarding the kiosk and the procedure because of your concern for AutoTruck and others not seeing it in the contract. Further, you did not want all loads on the kiosk; you just wanted IronTiger loads on the kiosk.

Again, the LOA was your idea and it was negotiated at your request. Further, before we opened up the additional terminals Tom Duvall and I met with you in Ft. Lauderdale, FL on December 16, 2009. The purpose of the meeting was to inform you that TruckMovers had been awarded the Navistar Contracts in Springfield, Ohio and Garland, Texas.

You were told that Navistar was even more strict in the requirements than Volvo/Mack, regarding the maximum percentage of loads/trucks that could be assigned by TruckMovers, Inc. to any one particular carrier including IronTiger. You were told and you understood that if TruckMovers exceeded this requirement it would be considered a material breach of the contract with Navistar.

You were told that TruckMovers could initially assign to IronTiger up to 75% of the loads without repercussion from Navistar. TruckMovers would try this and see how it worked out. You said you understood and agreed and you specifically stated that this issue had already been addressed in the attached Letter of Agreement to the CBA and that IronTiger and the Union had agreed to regarding loads appearing on the IronTiger drivers kiosk.

You and the Company then discussed the issues relating to the Union obtaining a majority of the signed Authorization Cards and subsequent recognition of the IAM by IronTiger if, in fact, the IAM obtained a majority of such signed Authorization Cards.

You were told and you knew that IronTiger has no contract with Volvo/Mack or Navistar and the contracts were with TruckMovers.

Boysen, review your October 12, 2010 e-mail to me. While your percentages are wrong and it was not at least, but up to a percentage and not to exceed that percentage of loads. Your e-mail concedes Truckmovers has the right to have loads moved by other carriers than IronTiger. That's why the LOA was negotiated and why we agreed as early as December 16, 2009 that for the same exact reason it applies to all terminals. You have always known that each terminal has been run the same way!

Further, using your October 12, 2010 e-mail and its admissions if other carriers can be used then other carriers were used and used at all the terminals. See Tom Duvall's 30 page e-mail to you listing TruckMovers and IronTiger units for all four terminals. It is exactly the same procedure and unit description for units at each of the four terminals and it has always been the same.

Also see your November 29, 2010 e-mail. You get it but your e-mail does not include all of the facts you are aware of. Again, as you know, IronTiger does not control Volvo/Mack and Navistar work—TruckMovers does! IronTiger has not subcontracted any loads and it has not given any work to Truckmovers. The opposite is true.

Now, to answer your questions, that you already know the answers to:

1. The system assignment is not a written process as I told you before. Kansas City merely gets a call from each terminal manager (TM). In Garland, as all other terminals, for example, the TM calls and tells Kansas City that there will be 10 IronTiger drivers for dispatch. This is a verbal instruction. Kansas City posts 10 runs for IronTiger drivers on the kiosk in the importance of delivery and then 10 IronTiger drivers are dispatched. That's it! Nothing is transferred by e-mail, etc. There is no distinction necessary for Truckmovers or any other carrier because only IronTiger work is posted on the kiosk. That is what you wanted! You should recall this entire procedure because this entire system was negotiated and designed by the Company and Union. Again, the way it works were even your suggestions and recommendations.
2. IronTiger only receives the posted information on the kiosk—nothing else! There is nothing else other than this posted information which is generated by the computer and is a mental process of merely sending sufficient loads for the

number of available IronTiger drivers in the order of each load and the importance of delivery. Again, there is no paper, no e-mail, no documents. From the kiosk the IronTiger drivers are then dispatched pursuant to the CBA. It's all telephonic and sent to the computer or the kiosk.

Again, if we had met as the Company suggested as early as April 5, 2010, we could have saved you a lot of time discussing and recalling all of the facts. Boysen, while I expect you will respond, please take a minute and review the facts and your notes of our negotiations of the LOA and other meetings, such as the December 16, 2009 meeting. Thanks,

Tom

(See Exhibit 16, attached to Tom Jones' affidavit, paragraph 19.). This was given to the Union and the Regional Director before the Complaint was issued on December 22, 2010.

ARGUMENTS

I. THE EMPLOYER NEVER HAD AN OBLIGATION TO FURNISH ANY INFORMATION. THE IAM'S REQUESTS WERE NEVER MADE RELEVANT BECAUSE IT ONLY MADE A CONCLUSIONARY ALLEGATION WITHOUT ANY SUPPORTING ARGUMENTS OR, MORE IMPORTANTLY, ANY FACTS. THROUGHOUT THIS ENTIRE TIME THE UNION HAS FAILED TO PROVIDE OBJECTIVE EVIDENCE OF A CONTRACT VIOLATION AND HAS FAILED TO EXPLAIN ITS REQUEST WITH ANY DEGREE OF PRECISION.

Here, too, the Union's grievance claims that, "The Employer is not placing all available loads on the dispatch board." However, the CBA provides that, ". . . loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers other than IronTiger Logistics. . ." This unqualified language trumps any possible contract violation. The CBA completely and unequivocally contradicts the Union's claim. It's that simple. At no time has the Union submitted any evidence of the contract violation after numerous requests by

the Employer; nor is it possible! There are no facts in dispute here! Each of these provisions and other facts will be discussed in detail below.

Recognizing an employer's obligation to provide relevant information that the union needs for the proper performance of its duties, *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956), a union when seeking information that is not presumptively relevant, the burden is on the union to demonstrate the relevance. See *Disneyland Park*, 350 NLRB 1256 (2007). The union, the IAM, is seeking information regarding subcontracting or, stated another way, the Union employees were not given loads that another carrier did get. The underlying grievance states, "The Employer is not placing all available loads on the dispatch board. . ." and, presumably, giving loads to another carrier, a non-union carrier. We state presumably because it is unclear, even now, what the Union is saying because it refuses to advise the Employer of any contract violations. Not one! Likewise, the Union has mysteriously continued to merely say the Employer is violating the CBA without more!

The General Counsel in *Disneyland* stipulated to a legal principle or premise before the Administrative Law Judge (ALJ) that has an application here:

As the General Counsel concedes, information about subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, does not constitute presumptively relevant information. *Excel Rehabilitation & Health Center*, 336 NLRB No. 10 fn. 1 (2001) (not reported in Board volumes); *Richmond Health Care*, 332 NLRB 1304 (2000); *Detroit Auto Auction, Inc.*, 324 NLRB No. 143 (1997); (not reported in Board volumes); *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995). Therefore, "a union seeking such information must demonstrate its relevance." *Excel Rehabilitation & Health Center*, supra at fn. 1, and cases cited therein. (See *Disneyland* at page 1265).

Not only was this premise agreed upon, it was made part of the Board's holding:

**5 Information about subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, is not presumptively relevant. Therefore, a union seeking such information must

demonstrate its relevance, *Richmond Health Care*, 332 NLRB 1304, 1305 fn. 1 (2000). (See *Disneyland* at page 1258).

This is easy to understand. It makes sense that bargaining unit information is not presumptively relevant because what the bargaining unit employees are or have been doing has nothing to do with a violation of a subcontracting issue. Again, why is what bargaining unit employees do significant? It's not. We assume they are doing bargaining unit work—so what! How does it shed light on any potential subcontracting issues (and vice versa)? What bargaining unit employees do is not even remotely tangential to whether or not the subcontracting provision has been violated. Again, they are doing bargaining unit work.

Therefore, the IAM needs to tell us more because, as stated in *Disneyland*:

To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information^[FN5] or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances. See *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018-1019 (1979), *enfd.* in relevant part 615 F.2d 1100 (8th Cir. 1980). Absent such a showing, the employer is not obligated to provide the requested information.

FN5. The union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information. *Island Creek Coal*, 292 NLRB 480, 490 fn. 19 (1989). See also *Schrock Cabinet Co.*, 339 NLRB 182 fn. 6 (2003).

As stated, the Union has only made conclusory arguments. Now, compare the language in *Disneyland* with IronTiger's contract language:

DISNEYLAND

During the terms of the Agreement, the Employer agrees that it will not subcontract work for the purpose of evading its obligations under this Agreement. However, it is understood

IRONTIGER

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics

and agreed that the Employer shall have the right to subcontract when: (a) where such work is required to be sublet to maintain a legitimate manufacturers' warranty; or (b) where the subcontracting of work will not result in the termination or layoff, or the failure to recall from layoff, any permanent employee qualified and classified to do the work; or (c) where the employees of the Employer lack the skills or qualifications or the Employer does not possess the requisite equipment for carrying out the work; or (d) where because of size, complexity or time of completion it is impractical or uneconomical to do the work with Employer equipment and personnel^[FN4]

and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011.

The Union cannot argue its request is relevant within the defining language of the CBA. In *Disneyland*, the language prohibited subcontracting unlike IronTiger's CBA. In *Disneyland*, it provided language that the employer could not evade the contract; language not in IronTiger's CBA; also, in *Disneyland's* CBA, it could subcontract under four qualifying contexts; again, IronTiger's CBA has no qualifiers. In *Disneyland*, the Board said, as here, that information requested was not relevant and is not apparent from the language or surrounding circumstances. However, in *Disneyland*, at least the union tried to explain why it needed the information. The Board, however, found “. . . these explanations insufficient under the circumstances to explain the relevance of the requested subcontract information” at page 1258. The Board went on to say:

In order to show the relevancy of an information request, a union must do more than cite a provision of the collective-bargaining agreement. It must demonstrate that the contract provision is related to the matter about which information is sought. . . . Here, it has not been shown that the union had a reasonable believe supported by objective evidence that the information sought was relevant.

Therefore, we find that the union failed to meet its burden. (*See Disneyland* at page 1258.)²

Now let's review the Union's evidence, here in its attempt to explain or clarify why its request is irrelevant and is merely a generalization without any facts to support the claim that could trigger the employer's obligation to furnish information (these e-mails are outlined in detail in the Statement of Facts):

1. The IAM's grievance. It merely says, "The employer is not placing all available loads on the dispatch board." March 29, 1010. (*See Exhibit 3*, attached to Tom Jones' affidavit, paragraph 8.).
2. Prior to the grievance Boysen's e-mail to Tom Duvall on March 16, 2010, stated, "All loads available loads are to be placed on the Board for dispatch." (*See Exhibit 4*, attached to Tom Jones' affidavit, paragraph 8.).
3. On March 16, 2010 Tom Duvall wrote back to Boysen and said, "All available IronTiger loads ARE placed on the board for dispatch. If you believe that they are not, please give me some specifics so that I can investigate." (*See Exhibit 4*, attached to Tom Jones' affidavit, paragraph 8.).
4. On the same day, March 16, 2010, Boysen explains his position to Tom Duvall: "Tom—don't question me on what I believe, here are the facts, one driver 1 load,—two drivers 2 loads—six drivers 6 loads. Enough of this bullshit." (*See Exhibit 4*, attached to Tom Jones' affidavit, paragraph 8.).
5. Tom Duvall, again on March 16, 2010, in an e-mail to Boysen, stated that we don't set the priorities, our client does. (*See Exhibit 4*, attached to Tom Jones' affidavit, paragraph 8.).

² Recent Board law affirms that there is a need for objective evidence which must be presented with the request for information for it to be relevant in subcontracting cases after *Disneyland* and stating that the failure to do so will result in a finding of no obligation to furnish anything. *See A-1 Door and Building Solutions*, 356 NLRB No. 76 (Jan. 11, 2011: Chairman Liebman, Members Becker and Hayes) in adopting the ALJ analysis; *Castle Hill Health Care Center*, 355 NLRB No. 196 (Sept. 28, 2010: same panel) adopting the ALJ analysis; *Chrysler, LLC and Local 412, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)*, AFL-CIO, 354 NLRB No. 128 (Aug. 5, 2010: Chairman Liebman, Members Schaumber and Pearce); and *Racetrack Food Services, Inc.*, 353 NLRB 687 (Sept. 30, 2010: Chairman Liebman, Members Becker and Hayes).

6. Boysen, on March 16, 2010, again responds, “Bullshit you WILL abide by the contract.” (See Exhibit 4, attached to Tom Jones’ affidavit, paragraph 8.).
7. The grievance is filed (See no 1. above). The company’s response is from Tom Duvall on April 5, 2010 that there was no contract violation and requested a meeting. (See Exhibit 6, attached to Tom Jones’ affidavit, paragraph 8.).

That’s the Union’s explanation. Compare these facts to *Disneyland*’s facts. Not only does the contract entirely trump Boysen’s claim, he has utterly failed to explain what provision or what facts support a claim and why his request is relevant. It’s still a mystery! Boysen’s generalization and his only emphasis on the word “BULLSHIT” does not come close to meeting his burden required by *Disneyland*.

The Union has failed to respond to the Employer’s inquiries requesting what the facts are and why its request is relevant. The Company requested the IAM, specifically, Boysen Anderson, to:

1. Tell the Company what contract violations exist to support his grievance, and the facts of any violation;
2. To explain why his previous information request is relevant, particularly when the Union has refused to tell the Company what the contract violation is, and, if it becomes necessary, to understand how the Company and the Union can come up with a process to resolve or settle the grievance or satisfy the IAM’s inquiry;
3. To meet to resolve the underlying grievance as in the past; if the Union has specific facts of a contract violation, the Company is willing to make the proper compensation; and
4. To meet to discuss these issues generally.

(See Exhibit 17, the November 24, 2010 e-mail from Tom Jones to Boysen Anderson, attached to Tom Jones’ affidavit, paragraph 20.).

The Company previously made a request for a meeting on October 25, 2010. (*See* Exhibit 13, attached to Tom Jones' affidavit, paragraph 16.). Similarly, he refused the Employer's request to meet on September 27, 2010, and he refused the Employer's request early on, shortly after he filed the grievance on April 5, 2010. (*See* Exhibits 5 and 6, attached to Tom Jones' affidavit, paragraph 8.). Therefore, from April 2010 to now, the Employer has made at least five (5) requests to meet, and Boysen Anderson has refused each one. Why? Answer: He has no facts to support a violation of the CBA nor can he establish relevancy!

Even though he has a statutory obligation to tell the Company what he has he has not done so.³ Without information from Boysen Anderson and the Union, the Company is unable to:

1. Know what contract provision has been violated;
2. Respond to the Union grievance without facts of a contract violation;
3. Understand the Union request for information without facts of a contract violation; and
4. Settle the grievance without facts of a contract violation.

How could the Employer, or the NLRB for that matter, make a decision regarding relevancy if the Union refuses to tell the Employer what the contract violation is, let alone provide any facts to support a violation of the contract? Preposterous. The IAM's and Boysen Anderson's grievance is bogus and so is his request for information. Anderson's answers the Employer's request are instructive. Anderson, in part, stated, "... As to your concerns regarding the merit of the grievance, the last time I checked, the merit [sic]of a grievance is the [sic] wholly

³ Just as the employer has an obligation to furnish relevant information, so does the Union under § 8(b)(3) of the Act. The obligation is not imposed on the employer alone, the IAM has a similar duty. *Oakland Press*, 233 NLRB 994; *aff'd*, 598 F.2d 267 (D.C. Cir. 1979). The Board continues to hold that the Union's duty to furnish information under § 8(b)(3) is "commensurate with and parallel to an employer's obligation to furnish [information] to a Union pursuant to § 8(a)(1) and § 8(a)(5) of the Act." *See, Local One-L*, 352 NLRB 906 (2008).

decision of the Union to determine, not the Company . . .” (See Exhibit 19, the October 18, 2010 e-mail from Boysen Anderson to Tom Jones, and attached to Tom Jones’ affidavit, paragraph 23.). NOT TRUE! The Union cannot just refuse to tell the Employer what provision was violated and what facts (including when and where) support a contract violation and a request for information.

Why won’t he meet? Answer: he does not have a clue of any contract violation and he simply ignores the CBA. Simultaneous, he has no facts; who, what, when, where, why, how and how many times, the contract has been violated because the “Letter of Agreement” trumps any such fiction he could create. Why won’t he tell us what his facts are? Answer; again, he has none! According to Boysen Anderson, only he should know what the violation of the contract is.

However, *Disneyland, supra*, at page 1258 provides:

In order to show the relevance of an information request, a union must do more than cite a provision of the collective bargaining agreement. It must demonstrate that the contract provision is related to the matter about which information is sought, and that the matter is within the union’s responsibilities as the collective bargaining representative.

Dismiss the IAM’s charge and the Complaint; tell the Union it can not make frivolous requests. The reason the Union has no facts of a CBA violation is because none could exist under the CBA’s “Letter of Agreement,” which gives the Employer the unilateral right to list loads on the dispatch kiosk. Nothing more could be clearer. While the Union has ignored the “Letter of Agreement” and apparently does not like this provision of the CBA, it is what it is.

II. THE UNION HAS NO FACTS TO SUPPORTS ITS UNDERLYING GRIEVANCE AND NO EVIDENCE THAT THE REQUESTED INFORMATION IS RELEVANT. ILLUMINATING THIS FAILURE, AND THE FRIVOLITY OF ITS REQUEST, THE UNION CHANGED ITS POSITION, MOST RECENTLY ON DECEMBER 9, 2010. THE UNION’S “REFORMULATED” INQUIRY FURTHER ILLUSTRATES THAT THERE IS NO DISPUTED FACT TO SUPPORT THE BASIS FOR AN UNFAIR LABOR PRACTICE.

When a party has no evidence, it argues the law and when there is no law to support its position, it just argues. That is exactly what Boysen Anderson has done. Early on, when Anderson was asked to explain his position or give any facts of a contract violation, he said, “Enough of this bullshit and . . . don’t question what I believe.” Another one of Anderson’s responses to a request for facts and no facts forthcoming he merely said, “Bullshit you WILL abide by the contract.” Anderson makes this an easy case. Anderson’s approach to not questioning what he believes attempts to place himself as an unquestionable mystic requiring everyone else to be clairvoyant. That is not the law and without facts the Employer never had an obligation to provide anything to the Union.

The union has done everything to confuse the underlying issue. The grievance cites Article 6 of the CBA and the grievance and contract simply states that the Company will place all available loads for dispatch. The Union, recognizing this is not a limitation, changes direction by changing its position that the Employer removed loads. Again, recognize that this also means nothing, the Union returns to its earlier position. Then, as late as December 9, 2010, the Union again changes its position and as the union states, it is to “reformulate” its position. This last confiscation is all based on the Union not having any facts to support a violation of the contract or any evidence to support the argument that its request for information is relevant. Time and again the Employer asked for an example of a contract violation and an explanation of not only

the violation but also why the request for information is relevant. To add to the Union's stonewalling is the Union's rejection of the Employer's numerous requests for a meeting. The Union did nothing to support its case even though it has the burden to do so and, instead of meeting in the light of day, it was hiding behind statements like, "Do not question what I [Boysen Anderson] believe."

The December 9, 2010 change in the Union's position, its self-admitted reformulation, is another admission it has no evidence of a contract violation and the Union's last ditch effort to breathe life into its request for information. However, this reformulation does just the opposite. The facts here are fully set forth in the Statement of Facts introduction on page ___. The Union wants to know two things: 1). What is the system for assignment of drivers and 2). What documents does the Company have regarding assignments. This system was negotiated with Boysen Anderson. The procedure was designed with Boysen Anderson's suggestions, which include that the procedure would be set out in a "Letter of Agreement." Anderson was asked if all loads IronTiger, TruckMovers or others should be placed on the kiosk and Anderson's response was just IronTiger loads. How many loads are assigned to IronTiger is based on a restriction from the customer to TruckMovers. Only some of the loads can be assigned to IronTiger and Anderson and the union knew this and it is why the "Letter of Agreement" was negotiated in the first place. The "Letter of Agreement" discussed above is an unqualified right of the Employer to assign loads to the IronTiger kiosk. The CBA simply provides, "The parties hereto agree that loads not appearing on IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics. . ."

This is the language negotiated by Boysen Anderson—it is the system of assignments. Other than this language it is undisputable that there is no other written procedure. As stated

earlier, for example, in Garland, Texas, as at all four terminals, the terminal manager calls and tells Kansas City that there will be 10 IronTiger drivers for dispatch (more or less). This is a verbal instruction. Kansas City posts 10 loads for IronTiger drivers on the kiosk and 10 drivers are dispatched. That's it! There is nothing to give to the Union that it does not already have or know.

Secondly, the Union's reformulation seeks documents. The Union admits in its December 1, 2010 request, and states in part:

“You responded on May 7th by stating: N/A, Done by system assignment not through e-mail or other written communication.”

Admitting this, the Union answers the Union's own question—there are no documents. The system is all telephonic—again, there is nothing to give the Union and the Union knew that at least as early as May 7, 2010. There are no genuine issues in dispute. The CBA has not been violated and there is no evidence to support Boysen Anderson's personal or his secret belief that the CBA has been violated.

CONCLUSION

We request that the Board transfer this case, 16-CA-17543, sever it from the Consolidated cases, continue the case, seek an Order to Show Cause, and ultimately dismiss the Complaint in Case No. 16-CA-17543. The Motion for Summary Judgment is appropriate because there are no facts in dispute that the Union's request is relevant as has been outlined above. The Employer, here, never did have any obligation to provide anything to the Union. The Union has wholly failed to demonstrate that the information request relates to a violation of the CBA. Failing to establish a violation of a CBA, or invent some articulation of a violation it is not reasonable or possible to assume that the requested information has a tendency to make the

existence of the Employer's decision or action more probable than not that that decision or action was a violation of the CBA. Therefore, the Employer did not commit an unfair labor practice and the Complaint should be dismissed and the summary judgment granted because there is no genuine issue of fact that the CBA had been violated and that the information requested will or can make it more probable that an employer's decision violated the CBA. We respectfully request the dismissal of the Union's unfair labor practice complaint in case 16-CA-27543.

Dated at Milwaukee, Wisconsin, this 4th day of February, 2011.

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