

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

Advice Memorandum

DATE: March 30, 2006

TO : Rosemary Pye, Regional Director
Region 1

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

SUBJECT: GES Exposition Services 240-3367-0415
Case 1-CA-42810 530-6067-6001-3750

This case, in which the Region has postponed the hearing on a complaint alleging that the Employer's refusal to provide information violated Section 8(a)(5), was submitted for advice on whether the Region should argue in the alternative that the dispute should be deferred to the parties' arbitration procedure.

We conclude that this case is not an appropriate vehicle to ask the Board to reconsider its policy against deferral of information violations.

FACTS

GES Exposition Services (the Employer) is in the business of supplying labor, equipment and material for trade shows. For six years, the Employer has had a collective-bargaining relationship with Teamsters, Local 82 (the Union), and the parties' current contract contains a grievance-arbitration mechanism, including binding arbitration to resolve disputes arising under the contract. Step One of the grievance process requires that an employee present a grievance to the Employer's designated representative within three working days. Article 8, Section 5 of the contract provides for an expedited appeal of any discharge or suspension. Under this provision, an appeal must be made within five days of the discharge or suspension, and an expedited arbitration hearing is expected within 45 days.

On May 27, 2005,¹ the Employer suspended an employee who had been working at the Hynes Convention Center. The Employer did not provide the employee written notice of the suspension. The employee immediately informed the Union's Secretary/Treasurer of the suspension and told him it was

¹ All dates are in 2005.

because of an alleged theft. That same day, the employee filed a grievance over his suspension.

On May 28, the Union's Secretary/Treasurer spoke with the employee's supervisor about the suspension. The supervisor told the Union that the employee had been suspended because a crate containing a plasma television was missing and that nobody could find it. The supervisor explained that he had checked with building security, who reviewed the videotapes of the building and spotted the employee driving a forklift off an elevator with the crate on it and that he had put the crate in another hall in the building near a doorway. The supervisor claimed that the employee was either trying to steal the television or make it as difficult as possible for the Employer to locate it.

A couple of days after his conversation with the supervisor, the Union's secretary/treasurer asked the job steward to review the videotape. The steward went to security and viewed the tape, and reported that it appeared the employee was driving the forklift but that he could not be absolutely certain in his identification. About June 1, the Union's secretary/treasurer called the Employer's Regional Director for Labor Relations, who told him that the videotape clearly showed that it was the employee driving the forklift off of the elevator with the missing crate. The secretary/treasurer made a series of phone calls to obtain the videotape from Employer representatives, all of whom claimed they did not have the tape and directed the Union to other individuals who then claimed they did not have it. In a conversation the next day, the Employer informed the Union that it had photographs of the employee on the forklift with the missing crate but again, the Union was directed to other individuals who purportedly possessed the photographs, all of whom denied having them.

By letter dated June 9, the Employer discharged the employee.² The letter stated that "[f]urther to the incident that occurred on May 21, 2005 at the Hynes Convention Center, an investigation was conducted by GES senior management. After carefully reviewing these issues, it has been determined that we have no choice but to sever our working relationship. Accordingly, effective the date of this letter, you are terminated from your employment with GES." The employee, by letter dated June 16, notified the Employer that he was going to appeal the termination

² The employee received this letter by certified mail on June 13.

pursuant to Article 8, Section 5 of the collective-bargaining agreement. In addition, he asked the Employer to provide to the Union "a more detailed explanation of the 'issues' which [the Employer] carefully reviewed, as described in [its] letter . . . and what evidence was uncovered during the course of the investigation . . . which led to [its] decision." The Employer never provided this information.

On June 20, the Union's attorney made a demand to the American Arbitration Association for the expedited arbitration of the employee's discharge pursuant to Article 8 of the collective-bargaining agreement. The attorney also made several oral requests to the Employer for any information regarding the termination. In addition, several times in June, the Union's secretary/treasurer continued to request the videotape, photographs, and any other evidence the Employer relied on to support the discharge. Sometime in late June, he requested the videotape from the head of security at the Hynes Convention Center, who told him that the videotape had been taped over.

About July 6, the Union's attorney wrote the Employer's legal counsel informing him that the Union had repeatedly requested documents and/or photographs relied upon by the Employer in terminating the employee and that the Employer had not provided any of the requested information. By the same letter, the Union's attorney renewed its request for the following information:

1. the employee's personnel file;
 2. the termination letter (and any subsequent communications with or by the employee);
 3. all notes, reports, memos, photographs or other materials prepared or received by the Employer or its agents regarding the termination;
 4. all documents relied upon by the Employer to terminate the employee;
 5. all facts relied upon to terminate the employee;
- and
6. the specific dates, times, places, and manner in which the Employer alleges the employee violated company policy.

The Employer has refused to provide the Union with this information. The Employer claims there was no request for information prior to the Union's demand for arbitration, and neither the Act nor the American Arbitration Association require a party to provide information after a request for arbitration has been filed. An arbitration hearing was scheduled for October 17, but the Union postponed it indefinitely because the Employer failed to provide the requested information.

ACTION

We conclude that the Region should litigate the complaint in this case, absent settlement, alleging that the Employer's refusal to provide the requested information violates Section 8(a)(1) and (5). [*FOIA Exemptions 2 and 5*

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It is well settled that an employer must provide a union with requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' collective bargaining representative."³ In particular, information necessary for processing grievances must be provided, upon request.⁴ Here, the Union has requested information to investigate the alleged theft by an employee, and his resultant suspension and discharge. We therefore agree with the Region that the information is relevant to the processing of the grievance.

[*FOIA Exemptions 2 and 5*

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³ Eazor Express, 271 NLRB 495, 496 (1984), quoting Associated General Contractors of California, 242 NLRB 891, 893 (1979), *enfd.* 633 F.2d 766 (9th Cir. 1980), *cert. den.* 452 U.S. 915 (1981).

⁴ NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). See, e.g., Eazor Express, *supra*; Bickerstaff Clay Products, 266 NLRB 983, 985 (1983); The Fafnir Bearing Co., 146 NLRB 1582, 1584-85 (1964), *enfd.* 362 F.2d 716 (2d Cir. 1966).

⁵ [*FOIA Exemptions 2 and 5*

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[FOIA Exemptions 2 and 5, cont'd.

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Factually and legally, there is no merit to the Employer's claim that it had no obligation to provide the information after the Union requested arbitration. Regardless of whether the Union's attorney first requested information before or after the demand for arbitration,⁸ there is no doubt that other Union representatives immediately began seeking information about both the suspension and the discharge immediately after the occurrence of each event, and before the demand for arbitration. In any event, the fact that the Union requested arbitration should not preclude the disclosure of information, since the contract required the filing for

⁶ [FOIA Exemptions 2 and 5

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⁸ The exact dates of the Union attorney's oral requests for information are not certain.

expedited arbitration within 5 days of the discharge. In light of this contractual procedure, the Union was required to make an immediate demand for arbitration to preserve its right to expedited arbitration.

Accordingly, the Region should set the complaint for hearing, absent settlement, and argue that the Employer's refusal to provide information violates Section 8(a)(1) and (5).

B.J.K