

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

Advice Memorandum

DATE February 14, 1997

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: Universal City Studios
Case 31-CA-22372

530-6067-3750
530-6067-6001-3755
530-6067-6001-6200

This case was submitted for advice as to whether an employer's failure to provide requested information that is intimately tied to an arguably meritless grievance warrants dismissal of the refusal-to-provide information charge.

FACTS

The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (IATSE) is the §9(a) representatives of a multi-employer bargaining unit; Local 683 is IATSE's designated agent and joint signatory, and party, to this collective-bargaining agreement. The employers in this unit, represented by the Alliance of Motion Picture & Television Producers (AMPTP) include, *inter alia*, Universal. The current collective-bargaining agreement between these parties, effective by its terms August 1, 1996-July 31, 2000, is herein called the 683 Agreement. The bargaining unit is described in Article I of the 683 Agreement.

IATSE and several producer-employers, including Universal, are also parties to another current collective-bargaining agreement termed the Producer IATSE and MPMO. Basic Agreement, herein called the Basic Agreement. Both Local 683 and Local 695, among others, are named as West Coast Studio Locals of IATSE in the Basic Agreement.

On July 5, 1996,¹ Donald Haggerty, Vice President of Local 683, sent a letter to Universal, indicating that Local 683 was initiating Step One of the 683 Agreement's grievance procedure. This grievance-letter alleged a violation of Paragraph 82 of the 683 Agreement, and Article XX(d)(2) of the Basic Agreement. The letter asserted that "without first discussing the matter with [the Union], your Company

¹ All dates will be in 1995, unless otherwise stated.

subcontracted [unit] work to a non-bargaining unit film processor. The letter continued:

In order to enable it to further investigate and pursue the merits of this grievance, the Union hereby requests that your Company provide it with any and all information, documents or records in your possession or under your control pertaining to your reasons for subcontracting this work and the type, amount and direct labor costs of the work subcontracted, as required by Section 8(a)(5) of the National Labor Relations Act, as amended. The Union hereby further requests your Company to make available to it for inspection those records that pertain to direct labor costs involved in the entire transaction between your Company and the non-bargaining unit film processor within twenty (20) days as provided by Article XX(e) of the IATSE Basic Agreement of 1993.

By letters dated July 19, Local 695 notified Universal that Local 695 "agrees and joins with Local 683" in the above grievance.

By letter dated July 22, Haggerty "initiate[d] the Step Two Grievance Procedure to resolve the Subcontract Violations [described in his] July 5 letter." No response had been received to the information request.

Apparently sometime in the latter part of July or very early August, Local 683 and Local 695 received a written or oral communication from Universal that requested particulars concerning the information request. Neither Haggerty nor Quiroz has a personal recollection of this communication. Local 683 (by Haggerty) and Local 695 (by Kimball), however, responded by joint letter to Universal dated August 5. This letter stated:

As per your request regarding particulars, the Union reiterates that your Company violated ... Article 20(d)(2) [of the Basic Agreement] "before such work is sent outside ... discuss the matter with the business agent of the Union." This was not done.

The letter continued by providing a "partial list of subcontracted work covered under our current [contracts]." It listed four movies assertedly sent to a non-signatory employer in Toronto, Canada. The letter concluded by reiterating the information request, that:

[Universal] ... provide [the Union] with any and all information, documents or records in your possession or under your control pertaining to your reasons for subcontracting this work and the type, amount and direct labor costs of the work subcontracted"

IATSE and the AMPTP set up a meeting for resolution of the Local 683 grievances and information requests, which had been filed against not only Universal, but also against about a dozen other studios. This meeting was held on September 26. Union witness Quiroz, who attended this meeting, indicated that discussion "mostly concerned the grievances filed against each of the companies with regard to their subcontracting work" to non-signatory employers.² The AMPTP representative stated that this subcontracting had been done by the employers since 1978, and on this basis, could continue; he noted that during collective-bargaining negotiations in 1983, the employers had requested concessions from the union, and as part of AMPTP's offer, the employers were willing to make concessions on subcontracting-out work. Since the unions had not agreed, there had been no change in the subcontracting language or practice.

To date, there has been no response from Universal regarding the information request.

Haggerty acknowledges that Universal and Warner have for many years been sending work that is covered under the Local 683 Agreement, and its predecessor collective-bargaining agreements, to be performed by employers who are not covered by the Agreement, and its predecessor collective-bargaining agreements. This practice has been done since at least 1986.

In relevant part, Paragraph 82 of the 683 Agreement provides:

Producer shall not have motion picture professional film ... processed in Los Angeles County, California outside its studio or laboratory by persons not subject to this Agreement unless persons subject to this Agreement cannot process such film because of any of the following reasons: Insufficient skill; insufficient personnel; ... when Producer does not possess the adequate equipment or facilities; ...

² That is, not signatory either to the IATSE Basic Agreement, or to the Local 683 Agreement.

However, before such work is sent outside, the Producer agrees to discuss the matter with the Business Agent of the Union.

This Paragraph shall not apply to ... work to be performed by any signatory or party subject to the [Basic Agreement] or by any parent, affiliate or subsidiary of the Producer or such a signatory. [Emphasis added].

Article XX(d) - Subcontracting - of the Basic Agreement provides:

The parties recognize the existence of past subcontracting practices within the multi-employer bargaining unit. The parties agree that the rights, limitations and restrictions upon subcontracting practices set forth in the West Coast Studio Local Agreements [i.e., the 683 Agreement] shall remain in effect.

The Producer, as a matter of preservation of work ... agrees that as to bargaining unit work of a type which has not heretofore been subcontracted in the multi-employer unit, the Producer will subcontract such bargaining unit work to any other person ... only:

(1) if the Producer first notifies the IATSE in writing of its intention to subcontract, and

(2) the direct labor costs of the ... entity who will perform such work under said subcontract are not less than the direct labor costs set forth in [the Basic Agreement or relevant Local agreements]; or

(3) if the Producer lack the requisite technology, facilities or equipment to perform the work. [Emphasis added]

Universal argues that the information request is irrelevant to the grievance and should be denied since the grievance lacks merit. In this regard, it argues that: it was privileged to subcontract under the contract and therefore any request for financial information about a subcontract outside Los Angeles County is irrelevant to any possible union grievance; it does not have the equipment or facilities to perform the film processing service, a limitation expressly covered by Paragraph 82; since the 1950's such film processing has been done by independent companies; and Paragraph 82 does not contain an area

standards clause; thus any request for financial information regarding the subcontract is irrelevant.

The Union argues that it needs the requested information to determine whether the grievances have sufficient merit to be carried to arbitration. This is particularly true since it was never notified as required by both Paragraph 82 and Article XX of the contracts of the Employer's decision to subcontract. The requested information will reveal whether or not the geographical exclusion of Paragraph 82 of Local 683's collective-bargaining agreement to Los Angeles, California applies. Further, under Article XX(d) the employer must notify the union in writing of its intention to subcontract and make available for inspection records pertaining to direct labor costs. The Union needs the information to determine whether subcontracted work is bargaining unit work of "a type not heretofore subcontracted in the multi-employer bargaining unit"; whether "direct labor costs" for "such work under said subcontract are not less than the direct labor costs set forth in ... applicable collective-bargaining agreements"; and whether "the Producer lacks the requisite technology, facilities or equipment to perform the work".

ACTION

Complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to provide the Union with relevant information about subcontracting.

In Bell Telephone Laboratories,³ the Board held that an employer that subcontracted work unlawfully refused to provide the union with a copy of the subcontract, a description of the work done, the scope for the job, cost of the subcontract, and copies of all correspondence with the subcontractor, even though the collective-bargaining agreement covering the employees gave the employer the right to subcontract work if subcontracting will not result in layoffs or reduction of employee's hours. The Board reasoned that the requested information was relevant to the union's processing of a grievance protesting subcontracting, where the subcontracted work reasonably could be considered as unit work and the union had a colorable claim that the subcontracting breached broadly contractual provisions. The Board stated:

The Board uses a broad, discovery-type standard in determining the relevance of an information request, and potential or probable relevance to

³ 317 NLRB 802, 803 (1995).

the filing and processing of grievances is sufficient to give rise to an employer's obligation to provide information. In assessing the relevance of the requested information, the Board does not pass on the merits of the union's grievance that the employer breached the bargaining agreement. Rather, 'The Board's only function in such situation is in acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities'. (Citations omitted)

The Employer's good faith belief that information is irrelevant is no defense. Thus, in E. I. DuPont & Co., 268 NLRB 1031 (1984), the Board held that a union that represents employees at one plant in the employer's textile fibers department was unlawfully denied information during negotiations pertaining to hourly wages and information pertaining to hourly wages and nonexempt salary paid to similarly skilled employees at nine other plants in textile fibers department. The Board reasoned that the employer's subjective belief that the information requested was irrelevant was not an adequate grounds for denial.

Applying these principles, we conclude that the requested information is arguably relevant to the Union's grievance. As in Bell Telephone, supra, the subcontracted work could reasonably be considered bargaining unit work. Given this finding, the Board stated that "it follows that information pertaining to the subcontracting of possible unit work is relevant and necessary to the Union's function of administering the collective-bargaining agreement and that the information requested is relevant to the grievance filed by the Union." Id. at 803. Without the requested information, the Union is unable to determine, under its contract provisions, whether the subcontracted work is bargaining unit work that has clearly been subcontracted before; and if the work has not been subcontracted before, the Union needs the information to determine if the direct labor costs under the subcontract are less or equal to the Union's contract; and whether the Producer of bargaining unit employees indeed lacks the requisite technology, facilities or equipment to perform the subcontracted work. This is especially true since the Employer admits that it failed to discuss its subcontracting with the Union as required by both Paragraph 82 and Article XX(d). The information that the Union seeks, i.e., the reasons for subcontracting, and the type, amount and direct labor costs of the subcontracted work, clearly is information encompassed within the language of Article XX(d). The Board does not evaluate the merits of the grievance but only

considers whether it is probable that the desired information is relevant and would be of use to the union in carrying out its statutory duties. Given this broad discovery standard, and the fact that the Employer clearly failed to comply with its contractual obligation to discuss its subcontracting with the Union prior to actually subcontracting, we conclude that the Union is entitled to the requested information.

The fact that the Union admits that the Employer has subcontracted some film processing work before does not negate the Union's right to the requested information since without the information, the Union would be required to take the Employer's word that the type of work subcontracted is covered by Article XX(d), and that the Producer does not possess the requisite skills or technology to perform the work. Thus, unlike the information sought in Calmat Co., 283 NLRB 1103 (1987) which the Board concluded was irrelevant to the issues raised by the complaint, here it is clear that the requested information **is relevant** to the grievance, which directly implicates the Employer's unilateral decision to subcontract without meeting its statutory obligation to both notify the Union and, for work normally process in Los Angeles County, to discuss the matter with the Union.

Accordingly, complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) of the Act by refusing to provide the Union with the requested relevant information about subcontracting.


B.J.K.