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

Advice Memorandum

DATE: September 24, 2009

TO : Alan Reichard, Regional Director
Region 32

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

SUBJECT: United Staff Workers Union
(SEIU-United Healthcare Workers West)
Case 32-CB-6754

554-1475
554-1475-0137
554-1475-0137-8000
554-1475-3325
554-1475-5000

This case was submitted for advice on whether the Union violated Section 8(b)(3) by refusing to provide the Employer with information it requested to determine whether the Union had a disabling conflict of interest. We conclude that the Union did not violate Section 8(b)(3) because the Union substantially complied with the request and, in any event, the requested information is not relevant because we have determined that, at the time the Employer requested the information, the Union did have a disabling conflict of interest.

The Employer here is SEIU-United Healthcare Workers West. The United Staff Workers Union (Union) represents the staff employees of the Employer. The background and facts regarding the dispute which gave rise to this case are fully described in a previous Advice memorandum.[1] In that memorandum, we concluded that the Employer was privileged to refuse to bargain with the Union because the Union had a disabling conflict of interest. As further described in that memorandum, the Union had a conflict of interest because former employees whose interests directly conflict with the interests of current unit employees held positions on the Union's executive board. Also in that memorandum, we concluded that the Union violated Section 8(b)(1)(A) by creating the conflict of interest that caused the Employer's refusal to bargain.

As further detailed in that memorandum, on March 11, 2009, the Union's president, Lily Hickman, notified the

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[1] United Staff Workers Union (SEIU-UHW-W), Cases 32-CA-24352, et al., and 32-CB-6627, Advice memorandum dated August 18, 2009.

Employer that she had resigned from her position as president and that she was being replaced by one of the former employees who was aligned with the Employer's competitor. When the Employer learned of the change in leadership it notified the Union that it would not deal with it due to the conflict of interest. On May 13, Hickman reinstated herself as president of the Union. She then informed the Employer that she was resuming her duties as president of the Union and requested that the Employer meet to discuss pending grievances and the payment of dues that the Employer had placed in escrow.

The instant case arises from that effort by Hickman to reinstate herself as president of the Union. In response to her notification to the Employer that she had resumed control of the Union and was ready to discuss grievances, on May 15 the Employer sent her a letter requesting information. The Employer requested numerous documents purportedly to ascertain who was running the Union, such as: documentation showing that Hickman was the legitimate president of the Union with authority to act on its behalf; the names of all officers, trustees, stewards and/or board members; the current status of certain individuals who both served on the executive board and were known to be affiliated with the competing union; the Union's constitution, bylaws, and membership policies; and whether the Union had contributed any funds to the competing union. The Employer explained that it was requesting the information to "evaluate the current extent of the conflict of interest caused by the Staff Union's involvement" with the competing union.

Hickman responded by email indicating that she believed the request to be reasonable, and that she would compile and forward the information. On June 19, she provided some of the information, such as the Union's constitution and bylaws, and an email from the Union's attorney to the NLRB regional office indicating that certain executive board members of the Union "were not doing anything for" the competing union. As to other information, Hickman indicated that certain matters were currently "in dispute," such as the status of the officers and trustees, and membership policies. As to whether the Union had contributed any funds to the competing union, Hickman responded that the Union does not "have access to the requested information."

The Employer notified Hickman that the response was inadequate, and the Union has not provided any additional information.

We conclude that the Region should dismiss the charge, absent withdrawal, because the Union substantially complied with the Employer's request for information and, in any event, the information is no longer relevant because we have determined that the Union has a disabling conflict of interest.

Both parties in a collective-bargaining relationship are entitled to information from the other that is relevant and necessary for collective bargaining or contract administration,[2] and it is well established that a union's duty to furnish such information parallels an employer's duty to do so.[3] Typically, a union is not required to provide information concerning its internal affairs.[4] However, in one case, we concluded that the union was required to provide the employer information regarding its internal union affairs where we found the information was necessary for the employer to determine its bargaining obligation following the union's reorganization.[5] In that case, we analogized the employer's need for the information to a union's need for information about an employer's potential alter ego status to discern the nature of its bargaining relationship.[6]

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[2] NLRB v. Acme Industrial Co., 385 U.S. 432, 435-436 (1967); Curtiss-Wright Corp. v. NLRB, 347 F.2d 61, 68 (3d Cir. 1965), enfg. 145 NLRB 152 (1963); Detroit Newspaper Printing & Graphic Communications Local 13 (The Oakland Press), 233 NLRB 994, 996 (1977), enfd. 598 F.2d 267 (D.C. Cir. 1979).

[3] Iron Workers Local 207 (Steel Erecting Contractors), 319 NLRB 87 (1995); HERE Local 226 (Caesars Palace), 281 NLRB 284, 284, 288 (1986).

[4] See, e.g. Service Employees Local 535 North Bay Center), 287 NLRB 1223, 1223 n.1, 1225-1227 (1988)(no duty to provide information regarding agency fee; duty to provide information is coextensive with statutory duty to bargain concerning mandatory subjects and agency fee is a nonmandatory subject), enf'd sub nom. North Bay Development Disabilities Services, Inc. v. NLRB, 905 F.2d 476 (D.C.Cir. 1990), cert. denied 498 U.S. 1082 (1991).

[5] SEIU Local 715 (Stanford Hospitals & Clinics/Lucile Packard Children's Hospital), Case 32-CB-6237, Advice memorandum dated January 24, 2008, pp. 5-8.

[6] Id. at pp. 5-6.

Without deciding whether or not the information requested here meets a similar standard of relevance, we conclude that the charge should be dismissed, absent withdrawal. First, it would be difficult to argue that Hickman refused to provide the requested information. She complied with the Employer's request as best she could. She provided whatever information was available to her, including indicating that certain matters regarding the Union's internal affairs were still "in dispute." Her responses were as complete and accurate as they could be under the circumstances.

Second, to the extent the Employer's request might have been relevant to determine its bargaining obligation, it is no longer relevant for that purpose. The Employer need not independently determine whether the Union has a disabling conflict of interest because we have determined that it does. In Case 32-CA-24352, as discussed above, we concluded that the Employer was privileged to refuse to bargain in light of the Union's disabling conflict of interest. In light of that determination, the Employer should no longer have a need to independently assess the Union's status to determine the nature of it's bargaining obligation.

Accordingly, the Region should dismiss this Section 8(b)(3) charge, absent withdrawal.

B.J.K.