

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

CENTER CITY INTERNATIONAL
TRUCKS, INC.

and

Cases 9-CA-060153
9-CA-060157

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO, DISTRICT LODGE 54, LOCAL
LODGE 1471

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF
TO EXCEPTIONS FILED BY RESPONDENT**

I. OVERVIEW

This case is before the Board on Respondent's exceptions and General Counsel's limited cross exceptions to the decision of Administrative Law Judge George Carson on November 15, 2011. ^{1/} ^{2/} The Judge correctly found that Respondent violated Section 8(a)(1) and (5) of the Act by failing to timely provide requested information relating to insurer responses, proposal content, and bids, unlawfully delaying in producing information reflecting pay increases from August 1, 2010 to April 1, 2011, and unlawfully delaying informing the Union that no additional supervisory notes existed. Respondent's purported defenses for its conduct raised in its exceptions simply do not withstand scrutiny.

^{1/} Unless otherwise noted, all dates referenced herein occurred in 2011.

^{2/} The General Counsel has filed separate cross exceptions and supporting brief.

II. FACTS

A. **Healthcare Information Requests**

The parties involved in this matter have been negotiating for a new contract since September 2009. (Tr. 17) ^{3/} One point of contention is the Employer's unilaterally implemented healthcare plan on November 1, 2010. (Tr. 24) On January 17, Tim Reilly, owner and CEO of Center City International Trucks, Inc., stated during a bargaining session that Respondent had submitted certain pieces of healthcare information to the National Labor Relations Board. (Tr. 26, 28; G.C. Ex. 2) After this meeting, Bill Rudis, chief negotiator for the Union, presented Respondent with an information request on January 19, seeking the healthcare information Respondent sent to the National Labor Relations Board. (G.C. Ex. 2) The Union needed the information in order to submit it to insurance agencies to receive healthcare proposals and quotes that the Union then could use to develop its own healthcare plan proposals for purposes of contract negotiations. (Tr. 34) On January 20, Respondent answered the Union's information request by sending an undated letter from United Healthcare to Respondent as well as various Healthcare proposals. (G.C. Ex. 3)

Also on January 19, Bill Rudis furnished Respondent with a second healthcare information request seeking information related to Respondent's current and past healthcare plans. (G.C. Ex. 4) In a bargaining session on January 21, Rudis asked Respondent to turn over the recently requested information. (Tr. 37) After Respondent failed to turn over the information by the January 25 deadline, on January 27 in a bargaining session, Rudis again sought the rates and requested information. (Tr. 37) On that same day during a break in

^{3/} References to the Administrative Law Judge's Decision will be designated as (ALJD p. ____); references to the transcript record will be designated as (Tr. ____); references to General Counsel's Exhibits will be designated as (G.C. Ex. ____); references to Respondent's Exhibits will be designated as (R. Ex. ____); and references to Respondent's exceptions and brief in support thereof will be designated as (R. Br. ____).

negotiations, Rudis emailed Reilly and once more informed Reilly that Respondent had failed to furnish the requested information and that the Union needed the information. (Tr. 38; G.C. Ex. 5) Although his email to Reilly on January 27 states that Respondent provided information to the Union, Rudis clarified that his statement referenced the information turned over to the Union on January 20 relating to G.C. Exhibit 2. (Tr. 40) The information provided was not responsive to the January 19 information request admitted as G.C. Exhibit 4. (Tr. 40)

On January 28, Rudis emailed Reilly once more to put Respondent on notice that it had yet to provide the Union with the information requested in G.C. Exhibit 4. (Tr. 42; G.C. Ex. 6) Respondent failed to turn over the information at this time. (Tr. 43) Rudis emailed Reilly again on February 2 and once more explained to Reilly that Respondent still had not sent the Union the information it requested on January 19. (Tr. 45; G.C. Ex. 7) Respondent did not respond at this time. (Tr. 47) On February 7, Pat Pesta partially responded to the Union's information request by sending three emails to Bill Rudis attaching 5 months' worth of healthcare billing information. (Tr. 48-50, 52-53; G.C. Ex. 8) In a March 24 negotiating session when the parties were discussing healthcare issues, Rudis again asked Respondent to provide the Union with the information it had requested. (Tr. 54-56; R. Ex. 10, page 257, line 15) ^{4/} Rudis explained to Respondent that the Union was still missing information related to Employer bids, proposals, correspondence, as well as billing information from 2008, 2009 and 2010. (Tr. 54-56) Reilly responded to Rudis by saying Respondent would be happy to fulfill the Union's information

^{4/} When referencing Respondent's Exhibit 10, Counsel for the Acting General Counsel will cite to the page number listed in the upper right hand corner as Exhibit 10 is so expansive.

request. (R. Ex. 2, page 00192) ^{5/} Respondent did not furnish the requested information at that time.

On May 26 in a bargaining session, Rudis told Reilly the Union was looking for what the company was paying in terms of dollars and cents, to which Reilly stated Respondent could get that information for the Union. (R. Ex. 10, page 291, lines 20-22) Rudis replied by saying the Union had been seeking that information all along. (R. Ex. 10, page 291, line 23) Respondent again failed to turn over the requested information, so Rudis sent Colston an email on June 27 again reiterating to Respondent what specific information the Union still had not received. (Tr. 57-59; G.C. Ex. 9) Respondent did not respond to the email, nor did it turn over the requested information at this time. (Tr. 59) Once more, on July 19 in an email chain with Colston, Rudis again mentioned specifically that the Union was still seeking the healthcare information it originally requested on January 19. (G.C. Ex. 10) Yet again, the Respondent did not turn over the requested information at this time. (Tr. 62)

In a bargaining session on August 12, Colston for the first time identified a 2006 Benefits Administrator's Summary of Benefits Booklet that Respondent uses when evaluating a healthcare plan. (Tr. 63) Rudis, believing this booklet contained pieces of information the Union had been seeking all along, asked Colston to provide the 2010 version of the booklet. (Tr. 67-68) Respondent eventually did. (Tr. 67-68; G.C. Ex. 11) Colston testified that Respondent could not provide the Union with the 2010 booklet in response to its initial request because Respondent does not keep the booklet around once the plan is implemented, yet Respondent had the 2006 version in its possession to give to the Union at this meeting. (Tr. 252-253) The 2010 booklet, which the Employer relied on to implement the November 1, 2010

^{5/} When referencing Respondent's Exhibit 2, Counsel for the Acting General Counsel will cite to the last 5 digits of the page number listed in the bottom right hand corner as Exhibit 2 is so expansive.

healthcare plan, contained several pieces of information the Union had been seeking since January 19 in its initial information request. (Tr. 69-70)

B. Performance Evaluation/Wage Rate and Job Classification Information Requests

On April 1, Joseph Gerchy, journeyman technician and a member of the Union's negotiating team, submitted a request to Tim Reilly for information relating to employee performance evaluations. (Tr. 142; G.C. Ex. 12) Included in this information request was a list of all bargaining unit employees' wage rate and job classification changes from August 1, 2010 through April 1, 2011. (G.C. Ex. 12) Instead of providing the requested information, Reilly responded by inquiring into the purpose of the information request. (Tr. 143; G.C. Ex. 21) In responding to Reilly's inquiry, Gerchy resubmitted his initial information request on April 4. (Tr. 143-144; G.C. Ex. 13) After Respondent failed to respond to Gerchy's requests, Bill Rudis renewed the previous information requests on April 10, 2011. (Tr. 79, G.C. Ex. 14) Once again, Respondent neglected to respond or turn over the requested information, so Rudis sent another letter to Reilly on April 26 reiterating that Respondent had yet to turn over the requested information. (Tr. 81-82; G.C. Ex. 15)

In the bargaining session on April 28, Respondent turned over to the Union employee evaluations from March 2011 and the corresponding wage and job classification changes. (Tr. 83) However, Respondent still neglected to give the Union supervisory notes or a comprehensive list of bargaining unit employee wage rate and job classification changes from August 1, 2010 through April 1, 2011. (Tr. 83) Even after Rudis explained to Respondent's negotiating committee they had not turned over all the requested information, Respondent neglected to give a reason for not doing so. (Tr. 83-84)

On May 2, Rudis sent Reilly another letter indicating that Respondent had to date failed to turn over specific pieces of information related to employee performance evaluations and wage rate and job classification changes. (Tr. 85; G.C. Ex. 16) Again Respondent failed to turn over the requested information at this time. (Tr. 85) The following day on May 3, Rudis sent Reilly an email reiterating that the Company had neglected and failed to turn over requested information. (Tr. 87-88; G.C. Ex. 17) Respondent failed to turn over the information at this time. (Tr. 88) Once more, on May 15, Rudis sent Reilly another letter seeking the information it had originally requested on April 1, and yet again, Respondent failed to respond to the request and did not turn over the information at that time. (Tr. 88-89; G.C. Ex. 18)

On May 26 in a bargaining session, Respondent turned over to the Union a software package used to evaluate employees. (Tr. 90) However, Respondent failed to turn over the supervisory notes used to evaluate employees as well as wage rate and job classification changes from August 1, 2010 through April 1, 2011. (Tr. 90) When Respondent intimated that they had complied with the wage rate and job classification change information request, Gerchy informed Respondent that they had only turned over wage and classification changes resulting from the recent evaluations, not the complete information from August 1, 2010 through April 1, 2011. (R. Ex. 10, page 288, lines 20-22)

With respect to supervisory notes, it is the Union's belief that these notes exist due to a letter from General Manager Jim Ray to Bill Rudis in which Ray specifically mentions the existence of supervisory notes. (Tr. 91-92; G.C. Ex. 19) In the bargaining session on May 26, the Union reiterated to Respondent that they needed the requested information because inconsistencies were found in the most recent performance evaluations. (Tr. 147; R. Ex. 2, page 00201, R. Ex. 10, page 288, lines 10-13)

On June 3, Gerchy informed Respondent that they still had not turned over the supervisory notes and wage rate and job classification change information. (Tr. 148-150) Recognizing that it had still failed to turn over all the requested information, Colston replied that Respondent would get that information to the Union. (Tr. 150) After Respondent again failed to comply with the request, Rudis sent an email to Riley explaining to him that the Union still had not received the wage rate and job classification change information. (G.C. Ex. 9) Once more on July 19, Rudis sent another email, this time to Colston, explaining to him that Respondent to date had failed to turn over the wage rate and job classification change information. (G.C. Ex. 10) On both occasions Respondent failed to furnish the requested information at that time.

III. RESPONSE TO RESPONDENT'S EXCEPTIONS

A. The Administrative Judge properly found that Respondent failed to timely provide requested information relating to insurer responses, proposal content, and bids in violation of Section 8(a)(5) of the Act.

In its brief in support of exceptions, Respondent argues it did not violate the Act by delaying to provide the Union with the "Proposal of Benefits" healthcare booklet. Respondent argues that certain pieces of information contained in the booklet were sent to the Union in January, that the information contained in the booklet was duplicative of the information already sent to the Union, that the Union was able to make healthcare proposals with the information supplied to it, and Respondent ultimately provided the booklet based on a separate information request in July 2011. However, Judge Carson properly found that Respondent failed to timely provide the Union with the "Proposal of Benefits" booklet.

In response to the Union's information request admitted as G.C. Exhibit 2, Respondent supplied the Union with pieces of information related to healthcare proposals. (G.C. Ex. 2, 3)

By sending this information, Respondent maintains “the Company had satisfactorily complied with the request and the union had the necessary information it needed in order to obtain quotes.” (R. Br. p. 19) However, Respondent severely misstates Board law pertaining to what is required with respect to information requests. Under the Act, an employer is obligated upon request to furnish the union with information that is potentially relevant and that would be useful to the union in discharging its statutory responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). As Judge Carson found, “Board precedent establishes, with regard to healthcare coverage, that requests for information relative to options ‘being explored by the Union for presentation to the Respondent . . . [are] clearly relevant to the Union’s collective bargaining responsibilities.’ *Martin Marietta Energy Systems*, 316 NLRB 868, 874 (1995).” (ALJD, p. 6)

In *Castle Hill Health Care Center*, 355 NLRB No. 196, 41 (2010), the Board agreed with the ALJ’s determination that “Respondent [was] not empowered to make a unilateral determination that presumptively or otherwise relevant information sought by the Union [was] unnecessary or irrelevant to bargaining or the performance of the Union’s statutory duties.” As the above-cited Board decision demonstrates, it is not for Respondent to unilaterally decide what information need and need not be sent, or that the information it had supplied was sufficient. Respondent’s claim that the remaining information was merely duplicative of the information sent to the Union is clearly incorrect. As Judge Carson noted, the booklet “contain[ed] documents not shown on this record to have been provided previously to the Union.” (ALJD, pp. 7-8, ll. 52-1) (Tr. 69-70; G.C. Exs. 4, 11) Specifically, Judge Carson properly observed that the booklet “includes a proposal from Medical Mutual of Ohio and various quotations that appear to come from an insurer identified as Anthem, information not shown on this record to have been included in any prior provision of information.” (ALJD, pp. 4- 5, ll. 52-3) Judge

Carson continued by saying “[t]he documents initially provided to the Union did reflect one bid from Anthem, but not the multiple bids reflected in the ‘Proposal of Benefits.’” (ALJD, p. 5, ll. 3-4)

The fact that the Union was able to submit healthcare proposals with the limited information provided to it does not absolve Respondent from fully complying with the information request. Indeed, Rudis testified that the Union still needed the full information to understand the costs associated with the current plan as well as previous plans so the Union could make complete, thorough, and accurate proposals. (Tr. 53-54, 71-72) Respondent in error relies on Rudis’ statement in the May 26 bargaining session that the Union had received the requested information and was able to submit proposals. Once again, Rudis did not say Respondent had furnished all the requested information or that Respondent had fully complied with the Union’s information request. As mentioned above, the Union was able to submit proposals based on the limited information they had received, but still needed the full complement of information to make complete and thorough healthcare proposals. (*Id.*)

Respondent seems to intimate that the Union admitted it had received all the information it had requested concerning healthcare. However, as discussed in more detail below, the Union did not know at this time that the booklet existed, as Respondent concealed its existence. The Union cannot know what information Respondent has that might be responsive to its request, thus the Union could not know whether or not Respondent had fully complied with the request. Additionally, Respondent could not have thought it had fully complied with the Union’s information request as subsequent to May 26, the Union emailed Respondent with detailed descriptions of what healthcare information had yet to be turned over. (G.C. Exs. 9, 10)

Next, Respondent attempts to escape liability by arguing that it eventually furnished the booklet to the Union pursuant to an information request specifically for the booklet in August 2011. However, as Rudis testified, the Union did not learn of the existence of the healthcare booklet until a bargaining session in August 2011 when Colston, for the first time, presented the Union with the 2006 version of the healthcare booklet. (Tr. 63) Colston admits he furnished this booklet to the Union in that bargaining session. (Tr. 252) Once the Union had time to inspect the 2006 version of the booklet, and after Colston identified there was a 2010 version of the booklet, the Union made an immediate information request for the 2010 version. (Tr. 63) As Rudis testified, and Judge Carson noted, although the booklet contained some information previously provided to the Union, it also contained information which pertained to the Union's January 19 request that had not been furnished. (ALJD, pp. 7-8, ll. 51-3) (Tr. 69-70; G.C. Exs. 4, 11)

The Union made a specific information request for the booklet in August only because it learned then for the first time that the booklet existed. Respondent apparently expects to evade penalty for failing to provide the booklet in January because it successfully hid from the Union the existence of the booklet until August. Respondent admittedly used this booklet in unilaterally implementing the November 2010 healthcare plan (Tr. 246); on the first page of the booklet is written in large font "PROPOSAL OF BENEFITS;" (G.C. Ex. 11) and the Union's January 19 request sought, among other items, any "proposal content" related to healthcare information. (G.C. Ex. 4) It is simply implausible that Respondent did not know this booklet was covered by the Union's information request. If Respondent had been forthcoming with the booklet when the Union initially made its information request on January 19, the Union would have never needed to specifically request the booklet in August, nearly 7 months after the initial

request. As Judge Carson correctly noted, “[t]he provision of the 2010 ‘Proposal of Benefits’ document to the Union in early September 2011 confirms that the information [previously] provided was not fully responsive to the information request made by the Union on January 19.” (ALJD, p. 4, ll. 5-8)

B. The Administrative Law Judge properly found that Respondent unlawfully delayed producing information reflecting pay increases from August 1, 2010, to April 1, 2011, in violation of Section 8(a)(5) of the Act.

As Judge Carson noted in his decision, “ ‘an ambiguous request may not be denied by an employer rather the employer is under an obligation to seek clarification.’ *Regency House of Wallingford Inc.*, 356 NLRB No. 86, JD slip op. at 16 (2011).” (ALJD, p. 9, ll. 21-23) In its brief in support of exceptions Respondent asserts that it had provided to the Union the requested information, i.e. the wage rate and classification changes of unit employees, less than a month after the initial request on April 1. However, Respondent only provided the Union with spreadsheets containing the current wage rate for bargaining unit employees on each specific date given. (R. Exs. 5, 9, 18-22, 24-25, 28-29) Moreover, Respondent was clearly on notice that it had failed to comply with the information request as Gerchy told Colston in the June 3 bargaining session the Union had not received the wage rate and job classification change information to which Colston said *he would get that information to the Union*. (R. Ex. 10, page 296) (emphasis added)

Furthermore, as Judge Carson indicates, “Respondent could not, in good faith, have continued to believe that it had complied with the Union’s request after Rudis sent the email to Colston on June 27, 2011 protesting the failure of the Respondent to provide that information.” (ALJD, p. 9, ll. 19-21) On June 27 and July 19 the Union informed Respondent it still had not submitted the information related to wage rate and job classification changes. (G.C. Exs. 9, 10)

However, in addition to these emails, the Union indicated to Respondent that it had not turned over all requested information in emails on May 3 and May 15 (G.C. Exs. 17, 18) The Union also explained to Respondent in the May 26 and June 3 bargaining sessions that they had not complied with this portion of the information request. (R. Ex. 10, pp. 291, 296)

The Union needed to know all wage rate and classification changes that took place between August 1, 2010 and April 1, 2011. (G.C. Ex. 12) Even though technician Gerchy testified at hearing that it did not matter to the Union whether an employee received one \$.50 cent raise or two \$.25 cent raises, chief negotiator Rudis clarified that in fact it did matter to the Union because the Union needed to see the dates and conditions under which raises were given. (Tr. 267) Additionally, Gerchy's testimony at hearing as to whether the Union needed to know whether an employee was given one \$.50 cent raise or two \$.25 cent raises is inconsequential. What is relevant is that the Union requested to see every wage rate and classification change and Respondent did not supply the information in a timely manner. As the Union told Respondent, based on the sheets provided, the Union could not decipher how many wage rate and classification changes took place between the furnished dates. In fact, while attempting to discredit Rudis and paint him as a liar, in complete conflict with its position, Respondent cites to the very point in the Union's bargaining notes where Rudis explicitly explains that the Union is looking for wage and classification changes and the date of the change. (R. Br. p. 26, fn. 7; R. Ex. 10, pp. 314-315) Contrary to Respondent's argument, nowhere on page 314 and 315 of the Union's bargaining notes does Rudis accept a month-to-month format for the wage rate and job classification changes.

Also, Respondent argues it sought clarification twice after the June 27 email. However, Respondent merely asked the Union what information was still outstanding to which the Union

responded that the wage rate and classification information had yet to be provided. Respondent contends the Union could have placed the furnished spreadsheets next to each other and figure out employees wage rate and classifications. However, as the Union told Respondent, based on these sheets, the Union could not decipher how many wage rate and classification changes took place between the furnished dates.

Respondent argues that following the Union's June 27 email it only took 1 month for the information to be provided. However, as Respondent indicates, once again contrary to their position, Colston did not seek clarification about the Union's request until the July 25 bargaining session. Therefore, although it took 1 month to supply the requested information, it also took nearly one month to *seek clarification* regarding the information request, precisely why Judge Carson found Respondent in violation of the Act. Additionally, Respondent argues it was reasonable that it took it less than a month from June 27 to provide the requested information. (R. Br. p. 26) However, this statement completely contradicts Respondent's own admission in the preceding two paragraphs where Respondent admits it took only *two days* to produce the desired information. (R. Br. p. 25-26) Consequently, according to Respondent's own admission, if Respondent would have properly sought clarification shortly after the Union's June 27 email, it could have furnished the requested information much sooner than 1 month.

C. The Administrative Law Judge properly found that Respondent unlawfully delayed informing the Union that no additional supervisory notes existed in violation of Section 8(a)(5) of the Act.

In its brief in support of exceptions, Respondent asserts that the letters sent to the Union on February 28 and March 7 were adequate representations to the Union that Respondent's supervisors do not keep supervisory notes. However, as Judge Carson accurately concluded, those communications did nothing more than contradict Respondent's assertion that supervisory

notes do not exist. It is clear from General Manager James Ray's letter to the Union that Respondent included employee Darren Ohde's verbal reprimand in Supervisor Jim Stickel's supervisory notes. (G.C. Ex. 19) The letter states that "the *supervisory notes* Mr. Stickel has on file for Mr. Ohde only contains the written verbal reprimand" thus indicating that Mr. Stickel did in fact keep supervisory notes, i.e. the verbal reprimand, and supervisory notes do exist. (G.C. Ex. 19) (emphasis added) Ray admitted that Stickel kept supervisory notes.

Additionally, Respondent contends in error that the March 7 letter informs the Union that the only notes Respondent kept on file regarding the grievance was the verbal reprimand, and thus the Union knew no supervisory notes existed. However, this contention is contradicted by the very wording of the letter. The letter states "[s]upervisory notes maintained by Shop Manager Jim Stickel concerning the matter are the only notes that *may or may not* exist concerning this matter." (R. Ex. 1) (emphasis added) The wording of the letter informs the Union that supervisory notes *may or may not* exist. That language is far from informative. At best the Respondent was vague as to whether Jim Stickel kept supervisory notes, and James Ray's February 28 letter seems to indicate Respondent did in fact have supervisory notes.

Furthermore, as Ray indicated that Stickel did have supervisory notes, i.e. the verbal reprimand, prior to the Union's April 1 information request, Judge Carson was correct in finding that "the correct representation would have been that there were no supervisory notes other than the note retained by Supervisor Stickel." (ALJD, pp. 8-9). However, as Judge Carson indicated, Respondent did not ultimately inform the Union until July 25, nearly 4 months after the initial request, that no supervisory notes existed without even mentioning the verbal reprimand that Ray acknowledged to be a component of Stickel's supervisory notes. (ALJD, p. 9)

IV. CONCLUSION

Respondent's exceptions, as shown above, lack merit. The record evidence and relevant case law support the Judge's finding that Respondent violated Section 8(a)(1) and (5) of the Act by failing to timely provide requested information relating to insurer responses, proposal content, and bids, unlawfully delaying in producing information reflecting pay increases from August 1, 2010, to April 1, 2011, and unlawfully delaying in informing the Union that no additional supervisory notes existed.

Accordingly, based on the foregoing and the record as a whole, the Board should affirm the portions of the Administrative Law Judge's decision to which Respondent has excepted.

Dated at Cincinnati, Ohio this 27th day of December 2011.

Respectfully submitted,



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