

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CENTER CITY INTERNATIONAL	:		
TRUCKS, INC.	:		
	:		
Respondent	:	Case Nos.	9-CA-60153
	:		9-CA-60157
And	:		
	:		
INTERNATIONAL ASSOCIATION OF	:		
MACHINISTS & AREOSPACE WORKERS	:		
AFL-CIO DISTRICT LODGE 54, LOCAL	:		
LODGE 1471	:		
	:		
Charging Party	:		
	:		

---

**CENTER CITY INTERNATIONAL TRUCKS, INC.'S REPLY BRIEF  
TO GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS  
TO ADMINISTRATIVE LAW JUDGE CARSON'S DECISION  
AND BRIEF IN SUPPORT**

---

Ronald L. Mason (#0030110)  
Aaron T. Tulencik (#0073049)  
William H. Dulaney III (#0037969)  
Mason Law Firm Co., L.P.A.  
425 Metro Place North, Suite 620  
Dublin, Ohio 43017  
[rmason@maslawfirm.com](mailto:rmason@maslawfirm.com)  
[atulencik@maslawfirm.com](mailto:atulencik@maslawfirm.com)  
*Counsel for Respondent,  
Center City International Trucks, Inc.*

Mr. Jonathan Duffey  
Mr. Daniel Goode  
National Labor Relations Board, Region 9  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271  
[Jonathan.Duffey@nrlrb.gov](mailto:Jonathan.Duffey@nrlrb.gov)  
[Daniel.Goode@nrlrb.gov](mailto:Daniel.Goode@nrlrb.gov)  
*Counsel for the General Counsel*

## **I. INTRODUCTION**

Respondent Center City International Trucks, Inc (“Center City,” “the Company” or “Respondent”) incorporates herein the arguments set forth in its initial Brief, and otherwise replies herein below to the positions taken within Counsel for the General Counsel’s (“General Counsel”) Answering Brief. It files this Reply pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (§ 102.46 (h)).

## **II. THE COMPANY DID NOT FAIL TO TIMELY PROVIDE THE 2010 “PROPOSAL OF BENEFITS” BOOKLET IN VIOLATION OF § 8(A)(5) OF THE ACT**

On January 20, 2011 the Company sent an e-mail to Bill Rudis<sup>1</sup> (“Rudis”) attaching documents responsive to the union’s January 19, 2011 information request. (G.C. 3.) Attached to said e-mail were bid proposals and premiums information from United Healthcare, Anthem and Medical Mutual for the healthcare plan that was implemented on November 1, 2010. (Id.) The Company also gave the union information prior to January 2011 which was responsive to the union’s January 19, 2011 request for information.

For example, during the October 5, 2010 bargaining session the Company submitted a document to the union entitled *Breakdown of Group Health Insurance Renewal Process for upcoming Renewal of November 1, 2010 for Center City International Trucks, Inc.* (Tr. pp. 173-174, 236, R. 11 & R. 12.) The document was prepared by John Colston (“Colston”)<sup>2</sup> specifically for the October 5, 2010 bargaining session. (Tr. pp. 173-174 & 236.) The document essentially outlined the policy and how Colston went about making the recommendation that the Company select the plan being offered by United Healthcare. (Tr. p. 236.) The document also outlines the

---

<sup>1</sup> Bill Rudis is the union’s lead negotiator and has been since September 2010. (Tr. p. 22.)

<sup>2</sup> John Colston is the Company’s Secretary-Treasurer. He has regularly participated in bargaining sessions since late April 2011 and has been the Company’s lead negotiator since May 26, 2011. (Tr. pp. 233-235.) Additionally, Colston evaluates insurance proposals that are given to the Company whether it be group health insurance or commercial insurance for the products the Company sells, services and/or maintains. (Tr. p. 234.)

substance of United Healthcare's proposals to the Company. (Id.) Lastly, the document demonstrates the general overview of how the Company ultimately selected United Healthcare's proposal. (Id.) Colston attended the October 5, 2010 bargaining session and explained the document to the union. (Tr. p. 237 & R. 12.)

During this meeting Colston also explained to the union how he goes about communicating with the Company's broker who also acts as the benefit administrator. (Tr. p. 237.) Generally speaking, the benefit administrator contacts the Company sixty (60) days prior to the renewal of a contract. (Id.) At that time they notify the Company where the existing carrier is with respect to the renewal. (Id.) It is at that time that Colston looks at the percentage of the increase and subsequently decides whether to accept the renewal as is or shop it with another carrier. (Tr. pp. 237-238.) Colston explained to the union that in this particular case he instructed the broker to shop the insurance with other carriers, the results of which are set forth in R. 11. (Tr. p. 238.) Certain carriers declined to bid while others came back with the proposal listed. (Tr. p. 238 & R. 11.) Lastly, Colston has little, to no written correspondence with the benefit administrator. (Tr. p. 238.) Most of the correspondence is telephonic. (Id.) Generally speaking, any written correspondence he received consists merely of an analysis, outlining the proposals received from the various carriers, not unlike what is set forth in R. 11. (Id.)

On October 8, 2010 the Company provided the union with benefit summaries for the new fourteen (14) month plan that United Healthcare was proposing. (R. 13.) The Company also provided the summary plan descriptions and a completed health care form that the union had previously requested. (Id.) On October 11, 2010 the Company presented a timeline for the Company's insurance quote per the union's request. (Tr. pp. 183-184.) Nick Wahoff

(“Wahoff”)<sup>3</sup> forwarded an e-mail from the Company’s benefit administrator outlining the timeline to Rudis. (R. 16.)

Accordingly, during the May 26, 2011 bargaining session, Rudis outlined all of the union’s work and its final healthcare proposal after *finally receiving the requested information relevant to insurance*. (R. 10 at p. 291.) (Emphasis added.) Incredibly, General Counsel argues that Respondent should not and cannot rely upon such a statement made by the union’s lead negotiator. *See*, General Counsel’s Answering Brief at p. 9. Apparently, Rudis’s statements are only reliable if they benefit the union and/or General Counsel.

The information contained in the Proposal of Benefits booklet (G.C. 11) was duplicative of the information the Company had already provided to the union in October 2010 and January 2011. (Tr. pp. 68-69 & 247.) Only a minuscule amount of information contained in the booklet had not previously been provided to the union. Even Rudis acknowledged that the majority of the information contained G.C. 11 had already been provided to the union in January 2011. (Tr. p. 68.) Nonetheless, the information in question was submitted to the union as part of a separate request for information.

During the July 27, 2011 meeting, both the union and the Company had their insurance representatives/benefit administrators in attendance. (Tr. p. 245, R. 2 at p. CenterCity60153\_subpoena\_00042 & R. 10 at p. 320.) During the meeting, the Company again presented several items to the union with respect to the insurance proposals that the Company had received from its insurance representative/benefit administrator. (Tr. p. 245, R. 2 at pp. CenterCity60153\_subpoena\_00042-44 & R. 10 at p. 320-328.) Further, the Company’s

---

<sup>3</sup> Nick Wahoff is the Government Sales Manager for the Company. Wahoff has been a regular member of the Company’s bargaining committee since June 2010. (Tr. 166-167.) Wahoff took notes during the bargaining sessions and his bargaining notes were introduced as R. 2. (Decision p. 2.) Inadvertently omitted pages from R. 2 were admitted subsequent to the Hearing as R. 31. (Id.)

insurance representative/benefit administrator described the process of obtaining insurance for the Company. (R. 2 at p. CenterCity60153\_subpoena\_00042.) Rudis inquired as to the other proposals, besides United Healthcare, that were submitted the Company. (Tr. p. 247.) As a result of the information gleaned from the July 27, 2011 meeting, Rudis submitted another request for information to the Company during the July 28, 2011 bargaining session. (R. 2 at p. CenterCity60153\_subpoena\_00037 & R. 10 at p. 334.)

The information request pertained to how the Company's benefit administrator pursued the providers. (Id.) As part of its response, the Company submitted to the union an actual quote from the benefit administrator relevant to the 2006-2007 plan year. (Tr. p. 62, R. 2. at p. CenterCity60153\_subpoena\_00040 & R. 10 at p. 350.) After reviewing the document, Rudis then requested the benefits proposal package for 2010. (Tr. pp. 62, 245-246 & 252.) The 2010 document was subsequently provided to the union via e-mail in early September and across the table during the September 9, 2011 bargaining session. (R. 10 at pp. 359-360 & G.C. 11.)

The Company did not produce the booklet in response to the union's January 2011 request for information because Colston did not retain a copy of G.C. 11 on file after the plan had gone into effect. (Tr. p. 246.) Once the Company has made its decision which plan to implement, he has no need to retain the proposals. (Id.) The Company made its decision on October 15, 2010 which plan it was going to implement. As such, the Company was no longer in contact with its benefit administrator as they were under a fourteen (14) month contract with United Healthcare. (Tr. p. 248.) Accordingly, the Company was not determining on its own which information sought by the union was irrelevant and/or unnecessary. Rather, the Company no longer had the booklet in its possession. Nonetheless, when Rudis requested a copy of the

2010 booklet, Colston asked the benefit administrator to go back to their file and obtain a copy for Rudis. (Tr. p. 246.)

The Company was not refusing to provide documents to the union nor was it concealing documents from the union. Furthermore, no one from the Company ever instructed the union that it was refusing to provide said information to the union. (Tr. p. 273.) These are not the actions of a company refusing to provide information and/or stonewalling a union. Rather, they are the actions of a company making a reasonable good faith effort to respond to the union's unremitting and overlapping requests as swiftly as circumstances would allow.

**III. THE COMPANY DID NOT FAIL TO TIMELY PROVIDE INFORMATION WHICH DEMONSTRATED PAY INCREASES FROM AUGUST 1, 2010 THRU APRIL 1, 2011 IN VIOLATION OF § 8(A)(5) OF THE ACT**

Less than one month after its April 1, 2011 request for information, the union had all the relevant information it needed to determine bargaining-unit wage rate and classification changes that had occurred from August 2010 thru April 2011. Specifically, on April 28, 2011, the Company provided the union with wage rate and job classification information for bargaining unit employees in effect on April 4, 2011. (Tr. p. 185, CenterCity60153\_subpoena\_00024 & R. 10 at p. 271.) The Company also submitted payroll notices to the union during this meeting. (Tr. p. 186-187, R. 2 at p. CenterCity60153\_subpoena\_00024, R. 10 at p. 271 & R. 18.) The payroll notices include any merit increases (the old rate of pay versus the new rate of pay) an employee may have received as a result of the 2011 performance evaluations. (Tr. pp. 186-187 & R. 18.) The payroll notices also include the employees' job classification. (Id.) Additionally, the Company provided the union with numerous spreadsheets setting forth employees' hourly

wage rate, hire date, and job classification. (Tr. pp. 191-193, R. 2 at p. CenterCity60153\_subpoena\_00024, R. 10 at p. 271 & R. 20.)<sup>4</sup>

The union was already in possession of the majority of the information it was seeking. For instance, on March 26, 2010, the Company submitted a document to the union containing bargaining-unit employees' names, hire date, job classification and hourly rate of pay as of October 10, 2008, October 31, 2009 and March 25, 2010. (R. 5.) On April 26, 2010, the Company provided the union with the 2010 performance evaluations. (Tr. p. 257.) Employees who received an increase in pay had payroll notices attached to their evaluations. (Tr. pp. 257-258.)

Similarly, on August 27, 2010, the Company submitted a document to the union containing bargaining-unit employees' names, job classification, hire date, hourly rate of pay as of September 2009 and hourly rate of pay as of August 2010. (Tr. pp. 152-153, 260 & R. 29.) On November 7, 2010, the Company supplied the union with another updated list of bargaining unit employees. (Tr. pp. 154, 189-190 & R. 15.) The list set forth the employees' names, their hire date, their job classification and their hourly rate of pay as of November 2010. (Tr. pp. 189-190 & R. 19.) The company also sent this document to Rudis via e-mail on November 12, 2010. (Tr. pp. 129-130 & R. 9.)

Notwithstanding, General Counsel goes to great lengths to highlight Rudis's and/or Joe Gerchy's ("Gerchy")<sup>5</sup> incessant correspondence on the following dates instructing the Company that it had not supplied the requested information: April 28, 2011, May 2, 2011, May 3, 2011,

---

<sup>4</sup> The spreadsheets are marked as Respondent's Exhibit 20. However, the spreadsheets are identified in the record as Respondent's Exhibit 23. (Tr. p. 191.)

<sup>5</sup> Joe Gerchy is a journeyman technician for Center City. He is the union's Negotiating Committee Chairman and has been involved in negotiations since the outset. (Tr. p. 138.) Gerchy is also the union's chief steward and he took notes during the bargaining sessions. (Decision p. 2.) Gerchy's bargaining notes were introduced as R. 10. Inadvertently omitted pages from R. 10 were admitted subsequent to the Hearing as R. 31. (Id.)

May 15, 2011, May 26, 2011, June 3, 2011 and July 19, 2011. *See*, General Counsel's Answering Brief at pp. 5-7 & 11-13. Yet, not once did Rudis and/or Gerchy articulate that the wage increases and job classification changes the union had requested be presented in a format illustrating each month of the time period requested nor did they communicate why the information they had already received months and in some cases years ago, was deficient. Even when the Company did ask for clarification the union simply reiterated that it was missing the information it had requested without explaining to the Company why the information it had already provided to the union was insufficient. (R. 2 at p. CenterCity60153\_subpoena\_00030, R. 10 at p. 302, Tr. p. 240 & R. 27 at pp. 3-5.). It was not until the July 25, 2011 bargaining session that Colston was able to figure out on his own that the union wanted the information provided to it in a monthly format despite the fact of having never received written or verbal correspondence from the union requesting the same. (Tr. pp. 205 & 243.)

Colston informed the union that the Company would have to prepare a special document illustrating the information in a monthly format. (Tr. p. 241-243.) During the meeting Colston showed the union the format in which he would present the wage rate and classification changes on a monthly basis and Rudis subsequently agreed to the format. (Tr. pp. 162-163, 205, 243, R. 2 at p. CenterCity60253\_subpoena\_00034 & R. 10 at p. 315.) The Company provided this information to the union during the July 27, 2011 bargaining session. (Tr. pp. 201-203, 241-243, R. 25, R. 2 at p. CenterCity60153\_subpoena\_00043 & R. 10 at p. 326.) Gerchy acknowledged that the Company had satisfied the union's request in late July. (Tr. pp. 154 & 161.)

General Counsel asserts that the Company attempted to "paint" Rudis as liar. However, Rudis was able to accomplish that feat all by himself. On direct examination Rudis testified that the union did receive the wage rate and job classification information it had requested. (Tr. pp.

94-95.) Notwithstanding, Rudis testified on rebuttal that the information provided to the union was not sufficient nor did he instruct Colston that the monthly format Colston had proposed was acceptable. (Tr. pp. 268, 272 & 277.)<sup>6</sup> The fact that the union's chief negotiator would shamefully lie under oath further establishes that the Company was never going to be able to satisfy the union's inundation of requests no matter how much information, in various formats, it submitted to the union.

Simply put, less than one month following the exact moment that Judge Carson determined that the Company "could not, in good faith, have continued to believe that it had complied with the Union's request" the company produced eight (8) spreadsheets that it had to specially craft for the union because its payroll system was incapable of producing what the union was demanding. (Tr. pp. 241-242.) Producing specially created documents in less than a month cannot be determined to be an unlawful delay especially taking into consideration that the union never once affirmatively notified the Company that it was seeking the requested information on a monthly basis *before* Colston was able to deduce that this is what the union was seeking. A delay in the production of documents is permissive if reasonable and, here, the minor delay is more than reasonable. The Company provided the union with the relevant information that it requested within a month of Judge Carson's June 27, 2011 date in which the Company could have no longer believed in good faith that it had complied with the union's request.

**IV. THE COMPANY DID NOT UNLAWFULLY DELAY INFORMING THE UNION THAT NO SUPERVISORY NOTES EXISTED IN VIOLATION OF § 8(A)(5) OF THE ACT**

The Company did not produce supervisory notes to the union as these do not exist. The union contends that the supervisory notes do exist as a result of information they learned during a grievance meeting. (Tr. p. 91.) The Company notified the union on multiple occasions that the

---

<sup>6</sup> Judge Carson did not credit Rudis's testimony on this point. (Decision p. 6.)

requested supervisory notes do not exist. Specifically, the Company sent letters to the union on February 28, 2011 and March 7, 2011 informing them that the only notes the Company had on file with respect to the grievance was the verbal reprimand of which the union *already* had a copy of. (G.C. 19 and R. 1.)

Moreover, Gerchy's notes from the February 27, 2011 grievance meeting expressly state that the verbal reprimand (put into writing per the request of Gerchy) was the only document in the grievant's file and the Company was offering to remove it from the said file. (R. 10 at pp. 201-202.) Gerchy *already* had a copy of the reprimand. (G.C. 19.) Furthermore, Wahoff again instructed Rudis during the July 25, 2011 bargaining session that the Company does not maintain supervisory notes. (Tr. p. 208, R. 2 at p. CenterCity60153\_subpoena\_00034 & R. 10 at p. 319.)

Nevertheless, General Counsel maintains that the letters referenced above were "vague" and "far from informative." *See*, General Counsel's Answering Brief at p. 14. With respect to the March 7, 2011 letter, General Counsel notes that "[t]he 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." *See*, General Counsel's Answering Brief at p. 14 & R. 1. Nonetheless, the very next sentence of the letter reads "[t]he union has already been provided with a copy of Mr. Stickel's notes (consisting of the written verbal reprimand)." Regarding the February 28, 2011 letter General Counsel notes that the "letter seems to indicate that Respondent did in fact have supervisory notes." *See*, General Counsel's Answering Brief at p. 14. However, the letter states "[t]he supervisory notes Mr. Stickel has on file for Mr. Ohde only contains the written verbal reprimand that was provided to the union per Joe Gerchy's request." (G.C. 19.)

Simply put, the Company cannot produce documents which do not exist. The union was on notice prior to its April 1, 2011 request for information that the only supervisory notes the

Company had in its possession was a verbal reprimand (which was memorialized in writing per the union's request) of which the union *already* had a copy of. Verbal reprimands put into writing at the request of the union steward are not the equivalent of "supervisory notes." Consequently, the Company did not violate § 8 (a)(5) of the Act.

**V. CONCLUSION**

For the reasons outlined above and in accordance with the evidence, Respondent Center City did not violate § 8(a)(1) and (5) of the Act. Accordingly, the Respondent respectfully requests that the Board reverse Administrative Law Judge Carson's rulings, findings, conclusions and recommended Order with respect to the issues raised on exception and dismiss the Complaint in its entirety.

Dated at Dublin, Ohio on this 10<sup>th</sup> day of January, 2012

Respectfully submitted,

/s/ Aaron Tulencik

Ronald L. Mason (#0030110)

Aaron T. Tulencik (#0073049)

William H. Dulaney III (#0037969)

Mason Law Firm Co., L.P.A.

425 Metro Place North, Suite 620

Dublin, Ohio 43017

t: 614.734.9450

f: 614.734.9451

e-mail: [rmason@maslawfirm.com](mailto:rmason@maslawfirm.com)

[atulencik@maslawfirm.com](mailto:atulencik@maslawfirm.com)

*Counsel For The Respondent,  
Center City International Trucks, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 10, 2012, an electronic original of Respondent Center City International Trucks, Inc.'s Reply Brief was transmitted the National Labor Relations Board, office of the Executive Secretary, via the Department Of Labor, National Labor Relations Board electronic filing system and, further, that copies of the foregoing Reply Brief were transmitted to the following individuals by electronic mail:

Mr. Jonathan Duffey  
Mr. Daniel Goode  
National Labor Relations Board, Region 9  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271  
[Jonathan.Duffey@nlrb.gov](mailto:Jonathan.Duffey@nlrb.gov)  
[Daniel.Goode@nlrb.gov](mailto:Daniel.Goode@nlrb.gov)

Mr. William Rudis  
Grand Lodge Representative  
International Association of Machinists & Aerospace Workers,  
AFL-CIO, Local Lodge 1471  
P.O. Box 628  
Hebron, CT 06248  
[wrudis@iamaw.org](mailto:wrudis@iamaw.org)

\_\_\_\_\_  
/s/ Aaron Tulencik  
Aaron T. Tulencik

*Counsel For The Respondent,  
Center City International Trucks, Inc.*