

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	:		
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**RESPONDENT CENTER CITY INTERNATIONAL TRUCKS, INC.'S  
ANSWERING BRIEF TO COUNSEL FOR THE GENERAL COUNSEL'S  
LIMITED CROSS-EXCEPTIONS TO ADMINISTRATIVE  
LAW JUDGE CARSON'S DECISION**

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## I. INTRODUCTION

This case was tried before Administrative Law Judge George Carson II (“Judge Carson”) in Columbus, Ohio, on September 19, 2011, pursuant to a consolidated complaint that was issued on July 29, 2011. The complaint alleged that Center City International Trucks, Inc. (“Center City,” “Company” or “Respondent”) violated § 8(a)(1) and (5) of the National Labor Relations Act (“the Act”) by failing and refusing to provide certain requested information related to a January 19, 2011 and a April 1, 2011 request for information. Judge Carson determined that the Company unlawfully delayed providing *some* of the requested information and failed to respond to *some* of the union’s requests.

Specifically, since January 19, 2011 the union has requested that the Company provide the following information with respect to its group health insurance plan:

- (1) correspondence between Respondent, its agent, and insurance carriers to shop a new health care plan;
- (2) a copy of insurer responses, proposal content, bids, and coverage proposals with the actual premium cost breakdown Respondent would incur per participant within each option level offered by such plan;
- (3) a list of Respondent costs (premiums) by billing cycle per month for the health care plan in effect for the period of October 2008 through October 2009, November 2009 through October 2010, and November 2010 through January 2011, including the actual premium cost breakdown Respondent paid or incurred per participant within each option level.

(Decision p. 7.) Judge Carson correctly dismissed paragraph’s one (1) and three (3) set forth immediately above. On December 13, 2011 the Company filed its Exceptions to Judge Carson’s Decision. Subsequently, on December 27, 2011 Counsel for the General Counsel (“General Counsel”) filed Limited Cross-Exceptions with respect to Judge Carson’s decision to dismiss General Counsel’s complaint allegation regarding paragraph one (1) noted above.

Contrary to General Counsel's assertions otherwise, Judge Carson correctly identified the issue presented and appropriately distinguished the case law cited by General Counsel. Judge Carson determined that there was no evidence that the information requested was not ultimately provided to the union. (Decision p. 7.) Accordingly, Judge Carson did not error in finding that the Company did not violate § 8(a)(1) and (5) of the Act and correctly dismissed paragraph 6(a)(i) of the Complaint.

## **II. FACTS**

On January 19, 2011 Bill Rudis ("Rudis")<sup>1</sup> sent an information request to the Company seeking certain information with respect to the health care plan that the Company implemented on November 1, 2010. (G.C. 4.) Specifically, Rudis requested the following information:

[T]he Union requests the Employer provide all correspondence with each insurance carrier its representative contacted or engaged discussion with to 'shop' a new health care plan, and provide a copy of all the health care insurer's responses, proposal content, bids and coverage proposals provided to the Employer with the actual premium cost breakdown that the Employer would incur per participant within each option level offered by such plan. Should the Employer premium costs be configured utilizing another method such information should be provided.

Also, the Union requests the Employer provide a complete list of all Employer costs (premiums) by billing cycle per month for the health care plan in effect for the period from October 2008 through October 2009; November 2009 through October 2010; and November 2010 through January 2011. Please provide the actual premium cost breakdown that the Employer (the actual dollars and cents paid to the insurer by the Employer) has paid or has incurred per participant (without name of the participant) within each option level offered by such plan. Should the Employer premium costs be configured utilizing another method such information should be provided. The Union understands that the Employer's health care plans for the period referred to in the paragraph above have been administered by United Healthcare. If another health care provider was engaged or contracted during the period referred to please provide the same information requested above.

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

(Id.) The Company produced all relevant information responsive to this request to the extent it had such information in its possession and to the extent such information existed. (Tr. p 162.) For instance, on January 20, 2011 the Company sent an e-mail to Rudis attaching documents responsive to the January 19, 2011 request. (G.C. 3.) Attached to said e-mail was correspondence from United Healthcare to the Company indicating that medical rates renew every twelve (12) months on the anniversary date and do not extend past that date without an increase in rates. (Id.) The letter also indicates that United Healthcare does not release claims information to employers who have less than 100 employees covered under the plan. (Id.) Also attached to the 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.)

During the January 28, 2011 bargaining session, the Company notified Rudis that he would get the health care bills he requested in the near future. (R. 2 at p. CenterCity60153\_subpoena\_00006.) On February 7, 2011 the Company sent the requested healthcare bills to Rudis via three (3) e-mails. (G.C. 8.) This information enabled the union “to go to insurance carriers and legitimately get – get them to give us quotes.” (Tr. p. 113 and R. 3.) Lastly, 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.)

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 instance, 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 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’s administrator. (Tr. p. 237.) Generally speaking, the benefit’s 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’s administrator. (Tr. p. 238.) Most of the correspondence is telephonic. (Id.) Generally

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<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.)

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.)

Moreover, 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's administrator outlining the timeline to Rudis. (R. 16.) On November 5, 2011 the Company provided the union with the new healthcare package that was distributed to the employees and a copy of the comparative of the old plan versus the new plan, including cost differentials. (R. 14.)

Despite receiving all of the information noted above and having acknowledged receipt on February 7, 2011 (G.C. 8.) of the necessary information it needed to obtain quotes and shop a plan and acknowledging the same again during the May 26, 2011 bargaining session, Rudis sent correspondence to the Company dated June 27, 2011 alleging that the union had yet to receive information relevant to insurance that it had requested in January 2011. (G.C. 9.) Rudis simply reiterated the same request for information he submitted to the Company on January 19, 2011. (G.C. 4.) Consequently, during the June 28, 2011 bargaining session Wahoff and Colston instructed the union they were unclear as to Rudis's latest request for information as they had already provided to the union the health care information it had requested. (R. 2 at p. CenterCity60153\_subpoena\_00030 & R. 10 at p. 302.) Rudis was not present at this meeting nor

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<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.)

did any of the union's representatives who were present explain to the Company the reasons as to why the information the Company had previously submitted to the union was lacking. (Id.)

The parties met again on June 30, 2011. (R. 2 at p. CenterCity60153\_subpoena\_00032 & R. 10 at pp. 305-309.) Rudis was not present at this meeting. (Id.) Although the parties discussed the union's proposed insurance plan in comparison with the Company's current plan, Rudis's June 27, 2011 request was not discussed by the parties. (Id.) Nevertheless, on July 17, 2011 Rudis sent correspondence to Colston alleging again that the Company has failed to "provide the outstanding information concerning the union's repeated requests for UHC Health Care" and "all other outstanding insurance carrier information." (R. 27 at pp. 3-5.) Colston responded the very next day as follows:

To the best of our knowledge all other items we have been asked to provide have been complied with at this point in time. If there is still an outstanding information request out there, let's discuss it at our next meeting to insure that I understand specifically what is still outstanding. Thanks for your understanding in this matter.

(Tr. p. 240 & R. 27 at p. 3.) Rudis responded on July 19, 2011 more or less regurgitating the union's January 2011 request for information. (R. 27 at pp. 1-2.) Notwithstanding, Rudis failed to explain how or why the information that the Company had already provided was not responsive to the union's request. (Id.)

The parties discussed Rudis's July 19, 2011 correspondence during the July 25, 2011 bargaining session. (Tr. p. 215, R. 2 at pp. CenterCity60253\_subpoena\_00033-35 & R. 10 at pp. 310-320.) The Company responded that it had already provided this information. (Tr. p. 215 & R. 10 at p. 317.) Rudis indicated that he wanted the Company's healthcare costs and the correspondence between the Company's benefit administrator and all the carriers they contacted. (Tr. pp. 215-216, R. 2 at p. CenterCity60253\_subpoena\_00034 & R. 10 at pp. 315-316.) Rudis

stated that he requested this information last fall and because they did not have it, they were unable to shop a plan at that time. (R. 10 at pp. 315-316.) Colston again explained the process of how the Company shops its healthcare plan. (R. 2 at p. CenterCity60153\_subpoena\_00034.)

During the July 27, 2011 bargaining session Colston again reiterated the Company's sincere belief that it had provided all the information requested. (R. 10 at p. 326.) Additionally, both the union and the Company had their insurance representatives/benefit administrators in attendance during the July 27, 2011 meeting. (Tr. p. 245, R. 2 at p. CenterCity60153\_subpoena\_00042 & R. 10 at p. 320.) During the meeting, several things were again presented 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.) The Company's insurance representative/benefit administrator described the process of obtaining insurance for the Company. (R. 2 at p. CenterCity60153\_subpoena\_00042.) Lastly, Rudis inquired as to the other proposals, besides United Healthcare, that were submitted the Company. (Tr. p. 247.)

**III. JUDGE CARSON CORRECTLY DETERMINED THAT THE COMPANY FULFILLED THE JANUARY 19, 2011 INFORMATION REQUEST WITH RESPECT TO CORRESPONDENCE WITH INSURANCE CARRIERS AND THEIR SUBSEQUENT RESPONSES**

General Counsel asserts that that Judge Carson "misconstrued the nature of the argument" presented by General Counsel and, as such, "erred in his conclusions in this regard." *See*, General Counsel's Limited Cross-Exceptions at p. 4. Specifically, General Counsel maintains that Judge Carson erred in determining that the Company was not obligated to contact third parties, i.e. the insurers when, General Counsel was in reality arguing that the Company was obligated to contact its hired healthcare broker. *Id.* pp. 4-5. While Colston admittedly did not specifically request the benefit administrator to provide its correspondence with insurance

companies, the record, as noted above, is littered with evidence demonstrating that the Company was in ongoing communications with its broker relevant to the union's insurance information request.<sup>4</sup> Taking all of the evidence on the record into consideration, Judge Carson correctly distinguished the case law cited by General Counsel and subsequently determined the following:

The brief of the General Counsel, citing *New York Post*, 353 NLRB 625, 629 (2008), argues that the Respondent was obligated to contact third parties, i.e. the insurers. I do not agree. **The precedent cited relates to information in the possession of the third parties but not in the possession of the Respondent. The Respondent herein utilized the services of a benefit administrator who, so far as this record shows, provided the Respondent with all relevant information obtained. Unlike the situation in *New York Post* or the subcontracting situation in *Public Service Co. of Colorado*, 301 NLRB 238, 246-247 (1991), there is no evidence that any third party possessed relevant information that was not provided to the benefit administrator.**<sup>5</sup>

Notwithstanding the wording of the complaint allegation, the Union did not specifically request all correspondence between the Respondent and its agent, the benefit administrator. There is no evidence that the responses of the insurers were not ultimately provided to the Union. I shall recommend that subparagraph 6(a)(i) of the complaint be dismissed. (Emphasis added.)

Decision p. 7.

Basing his decision on the evidence presented during the Hearing, Judge Carson correctly determined that (1) the Company's benefit administrator had *already* provided it with all the relevant information obtained; and (2) there is no evidence that any other third party possessed relevant information that had not already been provided to the Company's benefit administrator.

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<sup>4</sup> Unlike the Employer in *United Graphics, Inc.*, this is not a case where the Company failed to contact the third party. See, *United Graphics Inc.*, 281 NLRB 463, 466 (1986) and General Counsel's Limited Cross-Exceptions at pp. 5-6.

<sup>5</sup> General Counsel also cites *International Brotherhood of Fireman and Oilers* for the same proposition, i.e. the Company was obligated to contact its benefit administrator, a third party. See, General Counsel's Limited Cross-Exceptions at p. 6, referencing *International Brotherhood of Fireman and Oilers*, 302 NLRB 1008 (1991). Notwithstanding, this case is distinguishable for the same reasoning as noted above. The case relates to information in the possession of a third party, i.e. a doctor. Here, the Company's benefit administrator, so far as the record shows, provided the Company with all relevant information it obtained. Unlike the situation in *International Brotherhood of Fireman and Oilers*, there is no evidence that any third party possessed relevant information that was not provided to the benefit administrator and, in turn, provided to the Company.

Put another way, Judge Carson correctly determined that the Company ultimately provided the union with all the information it had obtained from its benefit administrator.

The only information the union was still seeking as of date of the hearing was the existing contract between the Company and United Healthcare and the benefit administrator's recommendation letter relative to why the Company should proceed with the United Healthcare.

Rudis testified as follows:

Q. Mr. Rudis, did the Employer ever tell the Union that it didn't have correspondence with insurance providers?

A. No.

Q. Okay. And did the delay in providing the information have an impact on the Union?

A. It did.

Q. And what impact?

A. It was never able to fully determine all the circumstances in which the Employer took into consideration its determination to proceed with the United Healthcare Plan.

Q. Okay. And, to date, what information is still outstanding?

A. Outstanding and request to the Employer includes its contract between itself and the medical provider, insurance provider United Healthcare, relevance to the exiting plan that was implemented in November of 2010.

In addition to that, what's missing is the Benefits Administrator's Group recommendation letter to the Employer recommending which plan to proceed with.

Q. Okay.

A. And also, in addition, is all of the outstanding information that has not been provided that -- that I've testified --

JUDGE CARSON: That -- that -- that doesn't work.

MR. GOODE: Yes.

JUDGE CARSON: That doesn't work.

MR. MASON: Yes.

THE WITNESS: Your Honor, it's like anything else. I mean, it's --

JUDGE CARSON: I know.

THE WITNESS: Understood. Understood.

JUDGE CARSON: Right. No.

MR. GOODE: Your Honor, I'm going to turn --

JUDGE CARSON: What you affirmatively are short is the existing contract and the specific recommendation relative to why the Company should go with this one.

THE WITNESS: Yes, Your Honor. In addition to the -- the letter to the NLRB, relevant to information they provided to the NLRB.<sup>6</sup>

JUDGE CARSON: Okay.

DIRECT EXAMINATION (CONT'D)

BY MR. GOODE:

Q. Has the Union received correspondence between the Employer and the insurance carriers?

A. Some.

JUDGE CARSON: And you obviously received enough information to shop a plan, insofar as the Union made a proposal.

THE WITNESS: A plan, yes.

(Tr. pp. 71-73.) The union, by its own admission, was already in possession of the information at issue in General Counsel's limited cross-exceptions.

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<sup>6</sup> The parties reached a stipulation with respect to this letter. Specifically, the General Counsel stipulated that the Company was not required to produce the correspondence it had submitted to Region 9. (Tr. p. 74.)

**IV. CONCLUSION**

For the reasons outlined above and in accordance with the evidence, Center City respectfully requests that Board affirm Judge Carson's ruling, finding and conclusion that it did not violate § 8(a)(1) and (5) of the Act with respect to paragraph 6(a)(i) of the Complaint.

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

Respectfully submitted,

/s/ Aaron Tulencik

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 10, 2012, an electronic original of Respondent Center City International Trucks, Inc.'s Answering Brief to Counsel for the General Counsel's Limited Exceptions to Administrative Law Judge Carson's Decision and Brief in Support 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 Answering Brief were transmitted to the following individuals by electronic mail:

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