

**UNITED STATES COURT OF APPEALS
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

SECURITY WALLS, LLC

and

Case 13-CA-076699

**INTERNATIONAL UNION, SECURITY
POLICE AND FIRE PROFESSIONALS
OF AMERICA**

**OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD
TO SECURITY WALLS, LLC'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 102.24 of the Rules and Regulations of the National Labor Relations Board, Counsel for the Acting General Counsel submits the following Opposition to Respondent Security Walls, LLC's Motion for Summary Judgment in case number 13-CA-076699. The motion asks the Board to grant the Respondent judgment as a matter of law, ostensibly because there are no material facts in dispute.

The Respondent's motion suffers from two fatal flaws. One, the Respondent's assertion that there are no material facts in dispute is inaccurate, and as a result, the Respondent has failed to meet the threshold requirement for granting a motion for summary judgment. Factual disputes as to discussions and the request for information are clearly at issue. Two, the Respondent's contention that the information sought by the Union, and its analysis and conclusion regarding relevance lacks support in Board law. The cases cited by Respondent do not support its position given the facts of this case. For example, Respondent citation on page 10 of its Memorandum in Support to *Southwest Bell Telephone*, supports the Counsel for the Acting General Counsel's position that an evidentiary hearing is required to determine what information may be relevant.

173 NLRB 172 (1968)¹. Additionally, the third-party contract terms have a direct impact on formulating future wage demands. Thus, the Board should deny the Respondent's motion for summary judgment and allow the parties to present their evidence to the administrative law judge to determine the facts and resolve this case expeditiously.

BACKGROUND

1. The original charge in this proceeding was filed by the International Union, Security, Police and Fire Professionals of America ("the Union") against Respondent Security Walls on March 15, 2012.

2. Following an investigation, the Union filed the First Amended Charge which added Allied Barton Security Services as a Respondent on May 15, 2012. On July 19, 2012, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued against Respondent Security Walls and Respondent Allied Barton Security Services as joint employers in Cases 13-CA-76697 and 13-CA-76699.

3. On August 20, 2012, the Acting Regional Director issued a First Amended Consolidated Complaint and Notice of hearing on cases 13-CA-76697 and 13-CA-76699 against Security Walls, LLC removing Respondent Allied Barton Security Services from the cases as it had entered into a settlement with the Region.

4. On August 27, 2012, Respondent submitted its Answer to the First Amended Consolidated Complaint and Notice of Hearing.

5. On September 10, 2012, Respondent Security Walls entered into an informal settlement agreement for case 13-CA-76697. The allegations in the complaint from case 13-CA-76699 involving the information request remain outstanding.

¹ "Other information, not so obviously related to the Unions bargaining or contract administration or grievance responsibilities may or may not be relevant, **depending on the circumstances.**" (Emphasis added) Id. at 172.

5. On September 18, 2012, the Regional Director issued a 7 day letter in writing on the charging party Union to enter into said informal settlement agreement for case 13-CA-76697. If the Regional Director approves the informal settlement agreement, he will issue a Second Amended Complaint and Notice of Hearing and an Order Severing Case 13-CA-76697 from the Complaint leaving only the information request allegations in Case 13-CA-76699..

ARGUMENT

I. The Respondent Has Failed to Show That No Material Facts Remain in Dispute and That It is Entitled to Judgment as a Matter of Law

Summary judgment is inappropriate where material facts remain in dispute. *Rules & Regulations*, Rule 102.24(b). Respondent first claims in its Memorandum in Support of its Motion for Summary Judgment that this case contains no disputed facts that have a bearing on its outcome. Respondent's position on the facts is patently incorrect. The issue at dispute is whether Respondent has unlawfully refused to provide the Union with a copy of its agreement with the DOE/Fermi (the DOE agreement). At trial Counsel for the Acting General Counsel will present witnesses who will testify to conversations they have had with company officials where relevance of obtaining the DOE agreement was discussed, including the DOE agreement's impact on current wages. Counsel for Respondent was involved in discussions and correspondence with the Union over this topic. Counsel for the Acting General Counsel also intends to present documentary evidence that corroborates the Union's assertions that the DOE agreement contains information which they require in order to carry out their representational duties. Thus, Respondent cannot claim that this case has no disputed issues of material fact.

II. Respondent Has Failed to Show That The Information Request is Not Necessary or Relevant to the Union's Role as the Unit's Representative.

Generally, an employer must provide requested information to a union representing its employees, whenever there is a probability that such information is necessary and relevant to its

representational duties. See *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Respondent claims in its memorandum that the information requested by the Union is not necessary, or relevant, in order for the Union to fulfill its representational duties. According to Respondent, the Union is entitled to the information it seeks only if that information is connected to a topic or subject raised during the course of collective bargaining or if it is necessary for the purposes of processing or resolving a grievance.

Pg. 3. Respondent's argument erroneously narrows its duty to provide information to the Union. Respondent must not only provide the Union with information that is necessary for the purposes it has presented; it is also obligated to provide information that is necessary and relevant for the Union to carry out other aspects of its **representational duties**. This includes the Union's duties to monitor and enforce provisions contained in the collective bargaining agreement as well as responding to issues that arise during the term of a collective bargaining agreement that may impact the employees in the bargaining unit. Also, if the information sought relates to the processing of a grievance, **or whether a grievance should be filed**, the legal test is for relevancy is made based on a liberal, discovery type of standard. (emphasis added) *Acme*, 385 U.S. at 437; *Knappton Mar. Corp.*, 292 NLRB 236 (1985). Thus, Respondent's claim that a pending grievance is necessary to show relevance is misplaced. Also, Respondent places the cart before the horse by presuming that there is no potential grievance when the evidence has not even been presented. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751

(1978), *enforced*, 603 F.2d 1310 (8th Cir. 1979). Respondent cannot claim that the information is not necessary to the Union's role when all the evidence has not been heard.

Absent an evidentiary record, Respondent is unable to demonstrate that the information sought by the Union is not relevant. Respondent asserts that the Union's claim of relevance is defeated by the language of Article 23(f) of the parties collective bargaining agreement, which governs negotiations over wages, as well as other articles of the collective bargaining agreement.

However, Respondent has neglected to point out that in the collective bargaining agreement, the wage reopener clause allows for negotiations over wages in the second and third years of the agreement. Article 23(f). Thus the Union's request for the DOE agreement which may impact Respondent Security Walls' ability to pay wage demands for unit employees is clearly relevant for future negotiations under the wage reopener provision even if it failed to timely request negotiations for 2012 over wages or preparing for a grievance.

The standard for relevance is: "a liberal discovery-type standard." *Loral Electronic Systems*, 253 NLRB 851, 853 (1980). "This information need not necessarily be dispositive of the issue between the parties, it need only have some bearing on it... [footnote omitted.]" *Contract Carriers* 339 NLRB 851, 858 (2003), the Board states the standard for information cases. "An employer, pursuant to Section 8(a)(5) of the Act, has an obligation to provide requested information needed by the bargaining representative of its employees for the effective performance of the Respondent's duties and responsibilities. *Id.* In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even, ultimately reliable. *U.S. Postal Serv.*, 337 NLRB 820, 822 (2002). "The [labor organization] is entitled to the information in order to determine whether it should exercise its representative function in the pending matter,

that is, whether the information will warrant further processing of the grievance or bargaining about the disputed matter.” *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enforced*, 531 F.2d 1381 (6th Cir. 1976).

Based on the foregoing, the Acting General Counsel opposes the Respondent’s Motion for Summary Judgment. The Respondent has failed to satisfy the standard for summary judgment because it has failed to demonstrate that there are no material facts in need of resolution at a hearing before an administrative law judge. Specifically, the Respondent’s version of the facts are very much at odds with the facts to be presented at trial. Additionally, as demonstrated above, Respondent has limited the relevance inquiry in far too narrow a way than the Board allows. The DOE agreement requested by the Union has relevance to Respondent’s ability to pay future wage demands that may be raised under the reopener provisions of the current collective bargaining agreement. Counsel for the Acting General Counsel requests that the Respondent’s Motion for Summary Judgment be denied.

Respectfully submitted,



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Dated at Chicago, Illinois
this 26th day of September 2012

CERTIFICATE OF SERVICE
13-CA-76699

The undersigned hereby certifies that true and correct copies of Opposition of the National Labor Relations Board to Security Walls, LLC's Motion for Summary Judgment have been served this 28th day of September, 2012, in the manner indicated, upon the following parties of record.

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