Mountain View Country Club, Inc. *and* Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL–CIO. Case 21–CA–083930

April 25, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On January 24, 2013, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Acting General Counsel filed an answering brief. The Charging Party joined the Acting General Counsel's brief.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Mountain View Country Club, Inc., La Quinta, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

Dated, Washington, D.C. April 25, 2013

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

[1] The Respondent contends that the Board lacks a quorum because the President's recess appointments are constitutionally invalid. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); and *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. at 1 fn.1 (2013).

[2] The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent excepts to the judge's finding that the Union did not withdraw its information request on June 26, 2012. Although we adopt the judge's finding that the Union did not withdraw its request, we further find that, even if the Union did, the Respondent's 55-day delay in providing the information before June 26 and its 36-day delay after the Union renewed its request on July 18 each independently violate Sec. 8(a)(5). "The duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow." *Woodland Clinic*, 331 NLRB 735, 737 (2000). Here, the Respondent presented no evidence justifying these delays in furnishing what turned out to be 11 "counseling reports" spanning a mere 14 pages.

[3] We shall substitute a new notice to conform to the Board's standard remedial language.

Choose not to engage in any of these protected activities.

WE WILL NOT unreasonably delay furnishing information to Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

MOUNTAIN VIEW COUNTRY CLUB

Jean C. Libby, for the Acting General Counsel.
Daniel H. Handman, for the Respondent.
Carlos R. Perez, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge: The Acting General Counsel alleges that Mountain View Country Club, Inc. (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act)[1] by unreasonable delay in furnishing necessary and relevant information to Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL-CIO (the Union) from about May 2, 2012[2] until about August 23.[3] This case was heard on November 25 in Los Angeles, California.

On the entire record, including my observation of the demeanor of the witnesses,[4] and after considering the brief filed by counsel for the Acting General Counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent is a California corporation with a principal place of business and a facility located at 80-375 Pomelo, La Quinta, California, where it is engaged in the operation of a full-service country club. In conducting its operations, Respondent derived gross revenues in excess of $500,000, excluding membership dues and initiation fees, and purchased goods valued in excess of $5000 directly from points outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

FACTS

On March 22, 2011, the Union was certified as the exclusive collective-bargaining representative of the following unit of employees, appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time golf course maintenance employees, working foremen, mechanics, mechanic assistants, irrigators, spray techs, equipment operators, and club house gardeners employed by the Respondent at its facility located at 80-375 Pomelo, La Quinta, California; excluding all other employees, office clerical employees, professional employees, timekeepers, watchmen, guards, and supervisors as defined in the Act.

At all times since March 22, 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

Following certification of the Union, in April 2011, Respondent and the Union began meetings for the purpose of negotiating a collective-bargaining agreement. Although no agreement has been reached, the parties continue their negotiations. To date there have been about 9 meetings. The parties agree that their negotiations have been amicable. At an early meeting, perhaps in April, May, or June 2011, Union Business Agent and Recording Secretary Michael Dea orally requested information about employee discipline—that is, suspensions, terminations, or write-ups of employees. Respondent's representative replied that he would have to get that information from his client. No information was provided at that time although Dea renewed his oral request at several subsequent meetings. Dea explained that he needed this information for unit employees in order to properly represent them and to file grievances, and to monitor whether employees were receiving progressive discipline. Ultimately, about a year after the initial oral request, Business Agent Dan Brennan sent an e-mail to Respondent on May 2, as follows:

> Please consider this email an official request for all disciplinary actions, suspensions and/or terminations that have occurred in the past 12 months. I need this information . . . within the next 3 days. The Union will seek all remedies to obtain the requested information. Thank you.

Respondent's representative responded on May 4 stating that he would call his contacts and find out what documents there were and how long it would take to assemble them. Sixteen days later, on May 18, when no documents had been produced, Brennan reminded Respondent of the information request. About a week later, Respondent again promised to call and find out what documents there were and how long it would take to assemble them. During the first week of June, Dea spoke by phone with Respondent's representative who asked if the Union still needed the disciplinary information. Dea responded that the Union still needed the information. Respondent asked if the information could be brought to the next meeting which was

[1] 29 U.S.C. §158(a)(1) and (5).

[2] All dates are in 2012 unless otherwise indicated.

[3] The original and first amended unfair labor practice charges were filed by the Union on June 25 and August 30, respectively. Complaint and notice of hearing issued on September 26. Respondent filed an answer and an amended answer admitting and denying various complaint allegations.

[4] Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

scheduled for June 26. Dea responded, "Just provide us the information as requested."

Neither prior to nor at the meeting of June 26, was the information provided. The parties disagree regarding whether at that meeting Dea told Respondent that there was no need to provide the documents because the Union did not believe that bargaining would continue. Dea denied telling Respondent that bargaining might not continue or that the Union no longer needed the information while Respondent's bargaining notes state that the Union told Respondent it could hold off on providing the information. As between the testimony of Dea and the bargaining notes of Respondent, I credit Dea's forthright and consistent testimony denying telling Respondent it did not need to produce the information requested. In any event, on July 18, any confusion was cleared up. At Dea's direction, Brennan wrote to Respondent noting that it had now been more than 2 months since the May 2 request and the Union still needed the information. On August 14, the Union, by e-mail, once again requested the information. Respondent promised to send it "shortly." Eventually, the Union received the information from the NLRB around August 23.

Analysis

An employer has an obligation to provide a union with relevant information during collective-bargaining negotiations. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 153 (1956). Information regarding terms and conditions of unit employees is considered presumptively relevant. *Whitesell Corp.,* 352 NLRB 1196, 1197 (2008), adopted by three-member Board, 355 NLRB 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Fleming Cos.,* 332 NLRB 1086, 1086–1087 (2000). A request for information may be made orally or in writing and does not need to be repeated. *Bundy Corp.,* 292 NLRB 671, 672 (1989).

The information requested in this case, disciplinary actions for unit employees, is presumptively relevant. *Booth Newspapers, Inc.,* 331 NLRB 296, 300 (2000); *Leland Stanford Junior University,* 307 NLRB 75, 80 (1992).The first written request for this information was on May 2. The information was provided on August 23, 3 months and 21 days after the initial written request for information. While there is no per se rule regarding timeliness of furnishing information, the law requires a "reasonable good faith effort to respond to the request as promptly as circumstances allow." *Allegheny Power,* 339 NLRB 585, 587 (2003). The complexity and extent of the information sought, its availability, and the difficulty in retrieving the information are factors considered in determining whether an employer has responded with reasonable promptness. Id., citing *Samaritan Medical Center,* 319 NLRB 392, 398 (1995).

Respondent is a single-location employer and does not assert that the information sought by the Union was difficult to retrieve. The disciplinary records for a unit of 23 employees would not appear to be complex and there is no evidence in the record that complexity of the information sought was a factor in the timing of production of the documents. Generic information on discipline, described as suspensions, terminations, or write-ups, specifically confines the extent of the information sought. Finally, there is no evidence that the information was unavailable. Thus, the factors of complexity, availability, and extent of the information sought militate toward a prompt response. However, each time the Union reiterated its request for information, Respondent's representative merely replied that he would have to talk to his client. From the constancy of this reply, I find that Respondent's representative made no attempt to gather the information and provide it to the Union from May 2 until August 23 when the information was finally provided to the NLRB.

Respondent asserted only that its delay was due to the amicable nature of negotiations and the June 26 statement that the Union might not need the information after all. I find that neither of these factors provides a defense for failure to promptly furnish the information. The mere fact that negotiations were amicable without any indicia of waiver of the request for information does not excuse timely furnishing of the information. Similarly, even had there been a statement from the Union withdrawing the request for information on June 26, and I have found there was not, by letter of July 18, the request was repeated. Respondent did not provide the information for another 5 weeks. Thus, I find that from May 2 to August 23, Respondent failed to provide the information in a reasonably prompt manner and thereby bargained in bad faith with the Union.

Conclusion of Law

By failing to provide presumptively relevant information, unit employees' disciplinary records, to the newly-certified Union in a reasonably prompt manner, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Employer's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2, 2012. When the notice is issued to Respondent, it shall sign it or otherwise notify Region 21 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the

entire record, I issue the following recommended[5]

ORDER

Respondent, Mountain View Country Club, La Quinta, California, its officers, agents, successors, and assigns, shall cease and desist from unreasonable delay in providing information to the Union or in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. Respondent shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Within 14 days after service by the Region, post at its facility in La Quinta, California, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since May 2, 2012.

2. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. January 24, 2013

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT unreasonably delay furnishing information to Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL–CIO.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

MOUNTAIN VIEW COUNTRY CLUB, INC.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."