

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 28, 2013

TO: Robert W. Chester, Regional Director
Region 6

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Teamsters Local Union No. 261 (First Student)
Case 06-CB-097248

536-2448
536-2581-6733
536-5025-0100
324-4060-5000
362-6708

The Region submitted this case for advice on whether the Union violated Section 8(b)(1)(A) by failing to provide a unit employee in one facility in a nationwide bargaining unit with the names and addresses of all unit employees covered by the nationwide master agreement for the purpose of gathering support for the filing of a deauthorization petition. We conclude that the Union did not violate Section 8(b)(1)(A) by failing to provide the employee with the information requested because it does not pertain to matters affecting her employment and the Union's refusal to provide this information does not impair any policy embedded in the Act.

FACTS

Background and Related Cases

In the spring of 2009, local unions affiliated with the International Brotherhood of Teamsters (IBT) representing employees of First Student (the Employer), a school bus transportation company with hundreds of locations across the country, voted to create a national bargaining committee with authority to bargain on behalf of all locals representing First Student employees. As a result of the vote, a national bargaining committee was formed and it began negotiations with the Employer for a nationwide master agreement.

In June 2010, after a Board-supervised election, Local 261 (the Union) was certified as the representative of the Employer's drivers and monitors in Ellwood City, Pennsylvania. In January 2011, the Employer and the Union signed a collective-bargaining agreement containing a union security clause. In April 2011, a unit employee filed a deauthorization petition with a showing that at least 30% of Ellwood City employees were in favor of revoking the union security agreement. On May 11,

based on a stipulated election agreement, a majority of the Ellwood City employees voted in favor of deauthorization.

Around this same time period,¹ the national bargaining committee reached agreement with the Employer on the terms of a nationwide master agreement (NMA). The IBT sent a letter dated May 11, 2011 to all affected union members explaining the basic terms of the agreement and describing the ratification vote. The NMA states that, upon ratification, all employees will form a single nationwide bargaining unit and the NMA will be binding on all affected local unions. However, any local agreements which contain greater wages or benefits will supplement the NMA and local unions can continue to negotiate local terms and conditions. The NMA also contains a union security provision which states that all employees must be members in good standing (or financial core payers) of each local union, and authorizes the Employer to deduct dues to be paid to each local union.² On May 21, the Union wrote to all Ellwood City employees and posted a notice stating that a nationwide agreement had been reached and that the ratification vote would be conducted by mail ballot among the eligible union members. Pursuant to the IBT Constitution, ratification required the approval of a majority of affected union members nationwide. The NMA was approved by over 90% of union members, to be effective June 1, 2011 through March 31, 2015.

On June 1, 2011, an Ellwood City employee wrote to the Union that she was revoking her dues checkoff and would not voluntarily continue to pay dues based on the Ellwood City employees' May 11 deauthorization vote. On August 22, the Union replied that the deauthorization vote only affected the union security clause of the local agreement and by the terms of the NMA, the employee was still obligated to remain a member in good standing or a financial core payor. The employee refused to make any payment and in December, the Union requested that the Employer terminate the employee pursuant to the terms of the NMA. The employee then filed charge 06-CB-070841 against the Union. Following an investigation, the Region issued complaint, concluding that, while the nationwide agreement was binding on the Ellwood City unit employees, the Union could not lawfully enforce the union security provisions of the NMA for one year following the successful deauthorization vote. In June, a settlement agreement was reached whereby the Union agreed to disgorge dues paid after August 2011 to any employees who claimed that they had

¹ At the time of the stipulated election agreement, neither the Employer nor Local 261 made the Region aware that negotiations for a nationwide agreement were ongoing.

² The NMA union security article further states: "[T]his paragraph shall be interpreted to provide the Union and its local unions with the maximum Union Security that may be legally permissible."

paid dues involuntarily. Under the terms of the settlement, the Union would be free to enforce the union security provisions of the NMA beginning October 1, 2012.³

Instant Unfair Labor Practice Charge

On November 1, 2012, the Union wrote to the Charging Party (CP), another Ellwood City unit employee, stating that she had failed to satisfy her union membership requirement and explaining that she could remit dues or become a financial core payor. On November 5, the CP filed charge 6-CB-92541 claiming that the Union should not be allowed to enforce the union security clause of the national agreement. The CP did not respond to the Union's November 1st letter and on December 4, the Union wrote to her again and warned that if she failed to respond, they would take action to enforce the union security clause. On December 17, the CP withdrew charge 6-CB-92541, FOIA Ex. 5 [REDACTED]. On December 19, the Union wrote to the Employer and requested that the CP be terminated for failure to remit dues or equivalent fees.

In early January 2013, the CP circulated a deauthorization petition among her coworkers at Ellwood City. On January 15, the CP attended a meeting with the Employer, representatives of the Union, and several other employees who had also failed to remit dues. The Union business agent explained why the national agreement applied to the Ellwood City location. The CP announced that she had a deauthorization petition signed by a majority of the employees at Ellwood City. The business agent told her that the petition was no good because it did not demonstrate that a majority of employees in the full bargaining unit supported deauthorization. The CP asked for a list of everyone in the bargaining unit. The business agent told her that he would look into it and let the CP know if the Union could provide a list. The attendees also discussed dues and the Employer's representative stated that it had to follow the contract and that the employees would be terminated if they did not pay dues. At the conclusion of the meeting, the employees were given until the following Monday to turn in paperwork indicating whether they wanted dues deducted from their paychecks or to remit dues on their own.

³ On December 2, 2011 in 4-RD-066924, the Regional Director dismissed a petition filed on behalf of First Student employees at the Cologne, New Jersey facility, finding that under the terms of the NMA, the locals had merged into a single nationwide unit and the petition therefore was not coextensive with the bargaining unit. Likewise, on April 13, 2012 in 19-UD-077098, the Regional Director dismissed a petition filed by employees at the Employer's facilities in Fairbanks, Alaska for the same reason. Upon a request for review, the Board affirmed the dismissal of that petition. *See First Student*, 359 NLRB No. 27, slip op. at 1 (December 5, 2012).

On January 17, the CP received a phone call from the business agent, who said that the Union's legal department had told him that the Union was not legally required to provide the CP with the names and addresses of bargaining unit employees and that he was declining to provide such a list. On January 29, the CP filed the instant charge alleging that the Union violated 8(b)(1)(A) by failing to provide her with the names and addresses of all unit members. On April 22, the CP informed the Region that she had paid all dues to become a member in good standing.

ACTION

We conclude that the Union did not violate Section 8(b)(1)(A) by failing to provide the employee with the information requested because it does not pertain to matters affecting her employment, and the Union's refusal to provide this information does not impair any policy embedded in the Act.

A Union's Duty to Provide Information

A union's duty of fair representation derives from its fiduciary obligation, as exclusive bargaining agent, to protect employees who have surrendered their individual rights to bargain with their employers on employment matters.⁴ The duty of fair representation includes the obligation to provide employees with requested information pertaining to matters affecting their employment.⁵ Employees are entitled to that information so that they can ascertain their rights and determine whether the union is properly carrying out its responsibilities as statutory bargaining representative.⁶ Applying that rationale, the Board has required unions to provide such information as copies of the parties' collective-bargaining agreements and union

⁴ *Vaca v. Sipes*, 386 U.S. 171, 182 (1967).

⁵ *See, e.g., Letter Carriers Branch 529 (Postal Service)*, 319 NLRB 879, 881 (1995) (union breached its duty of fair representation by refusing to provide employee with documents related to her grievance settlement).

⁶ *See Letter Carriers Branch 47 (Postal Service)*, 330 NLRB 667, 667 n. 1, 668 (2000) (employee could not know whether he would file a grievance or an unfair labor practice charge until he had reviewed the overtime list and determined whether he had been incorrectly charged with the overtime hours or been treated disparately), *enforced*, 254 F.3d 316 (2000) (unpublished table decision); *Law Enforcement and Security Officers Local 40B (South Jersey Detective Agency)*, 260 NLRB 419, 420 (1982) (employee could not know whether he was entitled to medical expense reimbursements until he reviewed health and welfare plan).

health and welfare plans,⁷ grievance forms related to an employee's grievance settlement,⁸ a union steward's list of employee overtime hours used to monitor the employer's distribution of overtime work,⁹ and job referral information where unions have operated an exclusive hiring hall.¹⁰ On the other hand, the Board has not required unions to provide employees with information that did not pertain to matters affecting their employment.¹¹

Deauthorization Votes and the Board's Representation Process

Under the Act, a majority of bargaining unit employees may vote to deauthorize union security upon the filing of a petition demonstrating a showing of interest of 30% or more of the unit employees.

⁷ *Law Enforcement Officers Local 40B*, 260 NLRB at 420 (employee entitled to copy of the collective-bargaining agreement and documents related to health and welfare plan).

⁸ *Letter Carriers Branch 529*, 319 NLRB at 881 (former employee entitled to documentation regarding grievance settlement where employee needed to know if settlement precluded her rehire).

⁹ *Letter Carriers Branch 47*, 330 NLRB at 668 (employee entitled to union steward's list of overtime worked by other employees where union used its list to verify employer's overtime calculations).

¹⁰ *See, e.g., Carpenters Local 35 (Construction Employers Association)*, 317 NLRB 18, 24 (1995) (employees on out-of-work list entitled to copies of referral information for preceeding six months).

¹¹ *See International Union of Operating Engineers, Local No. 12 (Nevada Contractors Association)*, 344 NLRB 1066, 1069 (2005) (union only required to turn over hiring hall information that was relevant to ascertaining whether hiring hall dispatchers were treating employee fairly); *Mail Handlers Local 307 (Postal Service)*, 339 NLRB 93, 93 (2003) (employee not entitled to statements of union's witnesses where employee had consented to final and binding settlement of his grievance and could take no further action); *APWU Local 434*, 2002 WL 506338, at *6 (NLRB Div. of Judges March 29, 2002) (union did not unlawfully refuse to provide name, address and telephone number of union's national business agent where information was not needed for employee to pursue his grievance).

The Board has consistently held that the unit for purposes of a deauthorization vote must be coextensive with the contractual unit.¹² In *Heck's, Inc.*, the Board dismissed deauthorization petitions filed by employees at separate locations because the recognition clause of the parties collective-bargaining agreement clearly intended to create one overall unit at ten different locations.¹³

The Board's established procedures for filing a valid showing of interest apply equally to all petitioners seeking an election.¹⁴ Every showing must be carefully checked against a payroll list provided by the employer to ensure that there is adequate employee interest to warrant the expenditure of Agency resources.¹⁵ After the showing of interest has been established and an election is directed, it is the employer's responsibility to provide the Regional Director with the *Excelsior* list containing the names and addresses of eligible voters.¹⁶ The Regional Director will in turn make the list available to all parties.¹⁷ In *Excelsior Underwear*, the Board explicitly applied this rule to deauthorization elections, stating:

[t]he petitioning employees would be entitled to the names and addresses of their fellow employees as an aid in their efforts to communicate their arguments against...continuance of an existing union security agreement...In short, the disclosure requirement here adopted applies *whenever a Board election has been*

¹² See, e.g. *First Student*, 359 NLRB No. 27, slip op. at 1; *Illinois School Bus Company*, 231 NLRB 1, 1 (1977).

¹³ 234 NLRB 756, 757 (1978).

¹⁴ See NLRB Casehandling Manual (Part Two, Representation Proceedings) Section 11020 – 11042. Cf. Casehandling Manual Section 11506.5 (requiring petitioner to show evidence of adequate showing of interest in support of deauthorization petition).

¹⁵ Casehandling Manual Section 11020. See also NLRB Rules and Regulations (Procedures in Referendum Cases), 29 CFR §101.27 (2013).

¹⁶ *Excelsior Underwear, Inc.*, 156 NLRB 1236, 1239-40 (1966). See also *NLRB v. Wyman Gordon*, 394 US 759, 767 (1969) (Court upholds *Excelsior* disclosure requirement finding Congress granted the Board “wide discretion” in election matters).

¹⁷ *Excelsior*, 156 NLRB at 1240.

scheduled and insures all parties to the election, whatever their viewpoint, of an opportunity to communicate with the electorate (emphasis added).¹⁸

The Board in *Excelsior Underwear* also recognized the concern that a petitioner might misuse employee contact information disclosed by the employer but found the likelihood of misuse minimized by the Board's practice of requiring at least a 30% showing of interest before processing the petition.¹⁹

In the context of union organizing campaigns, the Board, while recognizing the challenges faced by unions seeking to convey their message to employees, has never ordered an employer to produce employee information before a union has made the 30% showing of interest. In *Local 3, IBEW v. NLRB*, the court of appeals affirmed the NLRB's refusal to provide employee payroll lists to the union under the Freedom of Information Act, concluding that allowing the union to obtain these lists before demonstrating sufficient employee interest in an election would effectively circumvent the *Excelsior* rule.²⁰ In *Technology Service Solutions*, the Board held that an employer was not required to provide the union a list of employee names and addresses, prior to the provision of the *Excelsior* list, where the union had failed to demonstrate that it had no reasonable alternative means of communicating with the employees, even though the unit of employees was geographically dispersed and mostly worked out of their homes or vehicles.²¹ The Board noted that the union's request implicated a "significant" employee privacy right, and requiring the employer to supply a list in those circumstances would tend to undermine the careful balance drawn by the Board's *Excelsior* decision, which requires employers to provide such a list only after an election has been directed or agreed to.²² The Board has also declined to extend *Excelsior* to order an employer to produce employees' email

¹⁸ *Id.*, 156 NLRB at 1242 n. 14. See also *FJC Security Services*, Case 2-UD-366, 2008 WL 437757, at *19 (NLRB Div. of Judges September 23, 2008) (ALJ sustained petitioner employees' objection alleging that the employer, in a deauthorization election, had failed to provide a complete and accurate list of eligible voters pursuant to *Excelsior Underwear*).

¹⁹ *Excelsior*, 156 NLRB at 1244 n. 20. See also *Technology Service Solutions*, 332 NLRB 1096, 1099 (2000) (recognizing employees' significant privacy interest in nondisclosure of their names and addresses), supplementing 324 NLRB 298 (1997).

²⁰ 845 F.2d 1177, 1180 (1988).

²¹ *Technology Service Solutions*, 332 NLRB at 1098.

²² *Id.*

addresses where employees were inaccessible at their home addresses during the time preceding a scheduled election.²³

Application of these Principles

Here, we conclude that the Union did not breach its duty of fair representation when it refused to provide the CP with the requested information. First, the information that the CP is requesting about other unit employees does not pertain to any matter directly affecting her employment, and the CP is not alleging that she would use the information to examine whether she has been treated unfairly vis-à-vis her employment. Therefore, the Union has no duty, as exclusive bargaining agent, to provide her the information about other unit employees based upon its fiduciary obligation to represent her on issues affecting her terms and conditions of employment.

Further, the Union's refusal to provide the requested information does not impair any policy embedded in the Act.²⁴ Thus, even though employees have a Section 7 right to seek a deauthorization election, it is not a union's obligation to provide employees with the names and addresses of other bargaining unit employees for purposes of obtaining a showing of interest for a deauthorization election. Rather, as explained above, under the Board's established procedures for filing a valid showing of interest, a petitioner seeking a deauthorization election is not entitled to the names and addresses of employees until after the petitioner has demonstrated a 30% or greater showing of interest. And after that, it is the employer's obligation to provide that list to the Region. Therefore, the Union has no obligation to provide the information to the CP and its failure to do so impaired no policy embedded in the Act.

Furthermore, the fact that the IBT provides membership lists to candidates for local or international union office does not impose a duty on the Union to provide the

²³ See *Trustees of Columbia University*, 350 NLRB 574, 575-76 (2007).

²⁴ Cf. *Scofield v. NLRB*, 394 U.S. 423, 430 (1969) (Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has embedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule); *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1333-36 (1984) (union rule restricting resignation interfered with employee's fundamental Section 7 right to refrain from union activities); *Molders Local 125 (Blackhawk Canning Co.)*, 178 NLRB 208, 208-09 (1969) (union unlawfully disciplined an employee for filing a decertification petition because that action directly interfered with employee's right to invoke the Board's processes).

list to the CP for any other purposes. Title IV of the Labor Management Reporting and Disclosure Act requires that unions allow candidates for local or international office to inspect membership lists within 30 days of an election and must also refrain from discriminating against any candidate with respect to the use of membership lists.²⁵ Therefore, the Union's policy is a rational rule in compliance with its legal responsibilities.

Accordingly, the Region should dismiss the charge, absent withdrawal.

/s/
B.J.K.

²⁵ Labor Management Reporting and Disclosure Act of 1959 § 401(c), 29 U.S.C. § 481 (2013).