UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26

UNITED PARCEL SERVICE, INC.,

And

TEAMSTERS LOCAL UNION, NO. 480
affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Cases: 26-CA-072915
26-CA-076655
26-CA-078241

CHARGING PARTY'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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COMES NOW, the Charging Party, Teamsters Local Union 480, pursuant to Rule 102.46, and files its Brief in Support of Exceptions to the Decision of Administrative Law Judge Margaret G. Brakebusch (Hereinafter "ALJ") in this matter issued on March 4, 2013 and clarified by the ALJ on July 2, 2013.

I.

STATEMENT OF THE CASE

A. Procedural History

Teamsters Local Union No. 480, affiliated with the International Brotherhood of Teamsters (hereinafter "Union") filed the charges at issue in the consolidated cases 26-CA-72915, 26-CA-76655, and 26-CA-7824, on January 23, March 15, and April 6, 2012, respectively. Subsequently, the Acting General Counsel issued a 570-page consolidated complaint on June

28, 2012; an amendment to which was issued on August 15, 2012. The consolidated case was tried in Nashville, Tennessee, on August 28, 29, and 30, 2012.

The allegations of the charges and the consolidated complaint all relate to the significant and serious difficulties experienced by the Union in obtaining information from the Respondent, United Parcel Service, Inc. (hereinafter "Respondent") that is relevant and necessary in order to process grievances under the collective bargaining agreement. Paragraphs 10-544 of the Consolidated Complaint allege that during 2008, 2009, 2010, 2011, and 2012, the Union initiated information requests relating to 558 grievances in multiple requests and that the Respondent has either failed or refused to produce the requested information or has delayed the production of the requested information unlawfully.

On March 4, 2013 the ALJ issued a Decision in this matter. Subsequently, the Acting General Counsel was granted permission to request clarification of certain portions of the decision, and on July 2, 2013 a Supplemental Clarification of the March 4, 2013 Decision was issued. Pursuant to extensions of time requested by the Respondent in this matter, Exceptions to the Decision and Supplemental Clarification are due filed on or before September 6, 2013.

B. Background.

Respondent is in the business of transporting freight and packages throughout the United States. The Union and Respondent are parties to a collective bargaining agreement which covers the terms and conditions of employment for unit employees at the Whites Creek package hub facility in Nashville, Tennessee for the period from December 19, 2007 through July 31, 2013 (TR 34-35; GC 9).[1]

[1] The transcript is referred to herein as TR followed by the page number(s). Exhibits are designated by GC for General Counsel, U for the Union, and R for the Respondent followed by the number of the exhibit.

The most significant issue underlying the information requests at issue in this matter is the continuing conflict regarding shifter employees[2] at Whites Creek being denied overtime work opportunities because the Respondent had the work performed by lower-paid employees. (TR 67-70, 96-97, 500). A number of grievances regarding this issue were settled by what is referred to as the 2010 Global Agreement, however, the issues surrounding shifter work are ongoing. *Id.* The vast majority of the information requests at issue in the Consolidated Complaint are related to the numerous grievances regarding shifters' work. The remaining information requests at issue involve approximately sixty grievances concerning discipline, supervisors performing bargaining unit work, concerning job bidding and extra work issues, union duty issues, subcontracting, pay related issues, or safety issues. (Decision, p. 4).

C. The Requested Information.

1. Shifter Grievances.

The Union's information requests regarding Shifter grievances were for the documents necessary to investigate and process these grievances. The types of documents requested include what were described as the "five core documents": the shifter report, payroll history, time card, weekly operations report, and staffing report. (TR 97, 191, 194, 203). For grievances alleging that shifter work was performed by a feeder driver, the feeder coverboard and call list documents were requested. (TR 86). These documents were often provided after significant delays and multiple requests, or not at all. For example, with approximately 332 requests for shifter reports, 243 were never produced, while 43 were only produced over a year after the request was made, and only 18 were provided within 60 days of the request.

[2] Shifter employees move trailers within the confines of the facility. (TR 129).

2. Other Grievances.

The types of documents requested in relation to non-shifter grievances varies, but were all relevant and reasonable to the processing of the grievances. The Union's ongoing difficulties in obtaining requested documents from the Respondent were present regardless of the nature of the grievances.

II.

ARGUMENT

The Decision and Clarification of Decision found merit to many, but not all, of the allegations in the Consolidated Complaint. The Charging Party filed exceptions to the failure of the ALJ to find violations on several of the paragraphs in the Consolidated Complaint. These exceptions may be divided into three categories: exception to the finding that an allegation was without merit due to an error in pleading; exception to the findings that there was no merit to several of the allegations that the Respondent failed to produce the information requested; and exception to the findings that there was no merit to several of the allegations that the Respondent unlawfully delayed in providing information.

A. The General Obligation to Produce Information

Respondent, like all employers under the Act, has a duty pursuant to Section 8(a)(5) of the Act to furnish the Union upon request with relevant information that is necessary to the Union's performance of its statutory duties. *Pulaski Construction Co*., 345 NLRB 931, 935 (2005); *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). The Respondent's duty includes providing the Union with requested information relevant to contract administration in general as well as the processing of grievances. *Allison Corp*., 330 NLRB 1363, 1367 (2000); *NLRB v. Truitt Mfg. Co*.,

351 U.S. 30 149 (1956). It is long-standing Board precedent that information requested by a union in order to decide whether to proceed with a grievance or arbitration must be provided by the employer. *NLRB v. Acme Industrial Co*., 385 U.S. at 437-438. *American National Can Co*., 293 NLRB 901 (1989); *United Technologies Corp*., 274 NLRB 504 (1985); *Eazor Expree*s, 271 NLRB 495 (1984). This obligation applies even in situations where there is merely a probability that such information is relevant and useful to the union. *Bentley-Jost Electric Corp.,* 283 NLRB 564, 567 (1987).

A liberal discovery-type standard is applied by the Board in determining relevancy; essentially, any requested information concerning the bargaining unit employees' terms and conditions of employment is considered presumptively relevant. *W L Molding Co.,* 272 NLRB 1239 (1984). The Board has made clear that the union need not bear an exceptionally heavy burden to establish relevancy. *Dodger Theatricals Holdings, Inc.,* 347 NLRB 953, 967 (2006); citing *Wisconsin Bell, Inc.,* 346 NLRB 62, 64 (2005). The general test is simply a showing that the information requested is relevant to the issue and could be of use to the union in carrying out its statutory duties and responsibilities. *Acme Industrial Co*., 385 U.S. at 437. In fact, the union need not demonstrate that the information sought is certainly relevant or clearly dispositive of the basic issues between the parties, but only that it have some bearing on the issues. *Westinghouse Electric Corp*., 239 NLRB 106, 107 (1978); *W L Molding Co*., 272 NLRB at 1239. The merits of the underlying grievance are irrelevant to the determination of the relevancy of the information sought. *W L Molding Co*., 272 NLRB at 1239.

An employer must carry the burden of establishing that presumptively relevant information is irrelevant or cannot be supplied to the union in good faith. *Coca Cola Bottling Co*., 311 NLRB 424, 425 (1993). However, the employer may not unilaterally determine that presumptively or

otherwise relevant information requested by the union is unnecessary or irrelevant to the performance of the union's statutory duties. *Amphlett Printing Co.*, 237 NLRB 955, 956 (1978). Nor may an employer refuse to comply with requests considered by it to be overly broad and/or onerous. *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

B. Exceptions to Findings of No Violation for Failure to Provide Information.

The Decision and Clarification include findings that the Respondent did not unlawfully fail to provide requested information as alleged in Paragraphs 110, 273-279, 286-289, 296-298, 318-321, 334-336, 339, 353-354, 475, or 480. The Charging Party excepts to these findings on the basis that the evidence presented in this matter clearly establishes that all of the information requested by the Union was relevant, or that the Respondent failed to establish that it was not relevant, and that the information requested was not produced.

The ALJ stated that she found no violations for refusal to produce information when she found that the requests were "incomplete, ambiguous, or of such a nature that Respondent could not appropriately respond." Decision, p. 13. The preponderance of the evidence indicates that the requests were not incomplete or ambiguous. For example, Paragraph 110 involves repeated requests in association with a specific grievance for "Employee Record (including Attendance Report and Document Talk-Ins) for previous one (1) year." This seems specific enough and clearly indicates the records of the employee for which the grievance was filed. Even after the third request, no response was received by the Union. Had the Respondent had good-faith questions regarding what records were requested, it could have asked for clarification rather than simply ignoring the request.

Regarding the finding of no violation with the allegations of paragraphs 273-279 and 110, the ALJ determined that there was no refusal to provide information although she clearly also finds that individual employee shift reports were never provided. The basis for this determination is that the subsequent information requests were not edited to reflect that some of the requested information had been received. Decision, p. 27-28. While this could have been an inconvenience to the Respondent, it does not change the fact that relevant information was repeatedly requested but was never produced. A violation for refusal to produce the requested information should have been found for these paragraphs.

The ALJ found no violation regarding the allegations of Paragraphs 353, 354, 475, and 480 based solely on the fact that the information requests were submitted on March 7, 2012 and March 12, 2012 and the charge that the Respondent had refused to provide the information was filed on April 7, 2012. Decision pp. 29-30. This finding ignores the clear pattern and practice that was evident at the time the Union filed the charge as well as the fact that the information was never provided.

For several paragraphs where no violation was found the ALJ relied on her determination that the requests were too nonspecific or otherwise insufficient. Decision pp. 23-30. Paragraphs 286-289, 318-321, 334-336 and 339 fall into this category. Regardless of the fact that the individual requests on their face might appear *pro forma* and lacking detail, given the ongoing issues between the parties in this matter and the standard documents requested in the shifter grievances, the material requested was fully apparent to the Respondent. The fact that some of the documents were produced in response to the repeated requests of the Union does not negate the fact that specific documents requested were simply never produced by the Respondent. The ALJ should have found violations in regards to the allegations of these paragraphs.

The above-referenced paragraphs involve information requests which were relevant and necessary to the Union's duties, and the Respondent failed or refused to provide all of the requested documents referred to in the allegations of these paragraphs. Findings of violations for failure or refusal to produce requested information should have been entered in relation to these paragraphs, and the Union excepts to these findings.

C. Exceptions to Findings of No Violation for Unlawful Delays in Producing Information

The Respondent has a duty not only to furnish the information relevant to and necessary for the performance of the Union's statutory duty but to also do so in a timely manner. For the respondent to unreasonably delay in providing the requested information is just as much a violation of Section 8(a)(5) of the Act as is the Respondent's failure or refusal to furnish the information. *Amersig Graphics, Inc*., 334 NLRB 880, 885 (2001); *Britt Metal Processing, Inc*., 322 NLRB 421, 425 (1996), *affd. mem*. 134 F.3d 385 (11th Cir. 1997); *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992). What constitutes a reasonable amount of time for an employer to provide the information requested varies based on the complexity and extent of the information sought, its availability, and the difficulty in retrieving the information. *West Penn Power Co.,* 339 NLRB 585, 587 (2003), *enfd. in part and remanded* 394 F.3d 233 (4th Cir. 2005); *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

In the present case, although numerous violations due to delay were found, there were many other paragraphs where no violation was found. The Charging Party excepts to the ALJ's determinations that there were no violations for delay in producing information in ninety separate paragraphs of the Consolidated Complaint. No violation was found in delays extending

up to between thirty and sixty days in the allegations of thirty-two (32) separate paragraphs[3]; no violation was found in delays extending up to between sixty and ninety days in fifty (50) separate paragraphs[4]; no violation was found in delays extending up to between ninety and one hundred twenty days in four separate paragraphs[5]; no violation was found in delays extending up to between one hundred twenty and three hundred sixty days in Paragraph 283; and no violation was found in delays extending longer than one year in Paragraphs 83, 241, and 242. The Union excepts to all of these findings.

Because the vast majority of the information requests related to a single specific type of grievance for which the Union regularly requested specific, defined information in order to process each grievance, there is simply no excuse for the Respondent to delay in providing the information. The information requested in these matters is easily accessible to the Respondent, and the Respondent has actually placed an employee in charge of responding to these information requests on a full-time basis. Decision, p. 3. Given the circumstances surrounding the information requests, the Charging Party excepts to the findings of the ALJ that there were no violations due to delay in the paragraphs listed.

D. The Error In Pleading

The allegations of Paragraph 14 contain an obvious clerical error. The Consolidated Complaint alleges a delay in providing requested information from September 29, 2011 through January 25, 2011. Decision p. 13. Because it is clear from the context of the pleading that the actual date intended was January 25, 2012, and there is no genuine confusion regarding what was

[3] Paragraphs 238, 240, 301, 302, 304, 342, 343, 345, 368, 370, 371, 379, 392-95, 398, 404, 427, 429, 430, 434-37, 445-49, 456, 467.

[4] Paragraphs 30-69, 355-56, 363-64, 367, 369, 374, 470-72.

[5] 361, 362, 468, 469.

alleged, the language of the complaint should be considered amended to conform with the evidence. Permitting a violation of the Act to occur without penalty due to a minor clerical error is not reflective of the intent of the Act and should be remedied.

III.

CONCLUSION

For the foregoing reasons discussing in the Charging Party's Brief in Support of Exceptions, the Charging Party submits that the portions of the ALJ's decision to which it excepts are contrary to the preponderance of evidence in the record and inconsistent with Board precedent, and respectfully requests that the Board reverse the ALJ's decision on the specific findings to which the Charging Party excepts.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2013, the foregoing Brief in Support of Exceptions was served via electronic mail and U.S. Mail upon:

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