

**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 RESPONSE TO EMPLOYER'S
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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I. Introduction

Pursuant to Section 102.46(d) of the Board's Rules and Regulations, Teamsters Local 480 ("Union") hereby submits its Brief in Response to Employer's Exceptions to the Decision of the Administrative Law Judge. Teamsters Local 480 respectfully submits that the Exceptions of United Parcel Service, Inc. ("Employer") are without merit.

II. Statement of Facts

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.

The Union and the Employer both filed Exceptions in a timely manner, and several extensions of time for the responses to exceptions have been entered; the deadline for responses to exceptions is November 25, 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

The most significant issue underlying the information requests at issue in this matter is the continuing conflict regarding shifter employees² 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

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.

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

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. 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.

D. The Employer's Exceptions

In its Exceptions and supporting brief, the Employer identified four exceptions, which are each identified to several complaint paragraphs. First, it excepts to the fact that the ALJ failed to find that the Union engaged in bad faith bargaining; second, it excepts to the ALJ's failure to find that UPS was justified in failing to produce documents; third, it excepts to the ALJ's failure

to find that UPS acted in good faith in its attempts to respond to information requests; and finally, it excepts to the conclusion of the ALJ that no remedy could be issued regarding the “timing, duplicity of requests, and the overly broad nature of many of [the Union’s] requests.”

III. Argument

A. The ALJ Correctly Found that the Union Did Not Engage in Bad Faith Bargaining in the Paragraphs to Which the Employer Excepts.

The first exception of the Employer is that in her decision regarding many of the complaint paragraphs³, the ALJ did not find that the Union engaged in bad faith bargaining, a defense raised by the Employer for its failure to produce documents responsive to the listed information requests. This exception is without merit. The Employer made this exception to each of the many complaint paragraphs for which the ALJ found that it had unlawfully failed to provide information.

In her decision, the ALJ gave significant consideration to the arguments of the Employer that the information requests had been made in bad faith. In fact, the detailed discussion of her decisions on this matter spans pages 13-34 of the Decision. For example, one of the arguments raised by the Employer to support its defense that the Union was acting in bad faith was the fact that for many grievances, the Union requested the same categories of documents. The ALJ ruled that while this practice may be inefficient, “such practices as a general rule would not constitute bad faith.” (Decision, p. 17). Although UPS complains vigorously of the number of information requests it must process, it continues to fail to take the simplest route to reducing these requests – complying with the terms of the collective bargaining agreement so that the volume of grievances is reduced.

³ The relevant paragraphs are listed on pages 1-4 of the Employer’s Exceptions.

B. The ALJ Correctly Found that the UPS Was Not Justified in Failing to Produce Documents in the Paragraphs to Which the Employer Excepts.

The second exception is to the same paragraphs, and centers on the argument of UPS that the information requests were “voluminous, overly broad, duplicative and unduly burdensome.” Although this was part of the Employer’s argument that the requests were made in bad faith, UPS has taken separate exceptions on this one issue. Again, the ALJ correctly applied the law and held in the paragraphs excepted to by the Employer that the refusal of UPS to produce the documents was not justified.

Because of the very broad and liberal discovery standard in such matters, the breadth of the information requested is simply no justification for refusal to produce the information. The Board has held that 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). Further, 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). In this case, the Employer was unable to carry its burden to establish that the information requested was irrelevant, and the Employer's second exception is also without merit.

C. The ALJ Correctly Held that UPS Did Not Act in Good Faith.

The Employer's third exception is that the ALJ failed to find that UPS acted in good faith in attempting to respond to information requests listed in another long list of complaint paragraphs, in which the ALJ determined correctly that the Employer unreasonably delayed in responding.

Once again, the determination of the ALJ in this matter was correct under the law and the facts before her; the delay of UPS in producing responses to information requests was well-established. This exception is also without merit.

D. The ALJ Correctly Held That the Underlying Issues Between the Parties Were Beyond the Scope of Remedies Available to Her.

The Employer characterizes its fourth exception as "the ALJ incorrectly concluded that no remedy could be issued for the 'timing, duplicity of requests, and the overly broad nature of many of [the Union's] requests.'" Although the ALJ expressed concern over the issue quoted, the substance of that paragraph relates to the fact that in the scope of her role, she may only determine whether the Respondent "unlawfully failed and refused to furnish information or unreasonably delayed in furnishing requested information." (Decision, p. 35). She continues to state that she cannot issue any remedy which would "resolve the underlying problems and the

clearly dysfunctional working relationship that exists between these parties.” In this, she is correct, and the Employer’s fourth exception is also without merit.

IV. Conclusion

For the foregoing reasons, the Employer’s Exceptions to the Administrative Law Judge’s Decision are without merit. The Union respectfully requests that the Board uphold the ALJ’s decision as to the Employer’s Exceptions, and respectfully renews its request that the Board reverse the ALJ’s decision only on the specific findings to which the Charging Party excepts.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2013, the foregoing Brief in Support of Exceptions was served via electronic mail and U.S. Mail upon:

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