

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SANDS BETHWORKS GAMING, LLC d/b/a
SANDS CASINO RESORT BETHLEHEM

and

Case 04-CA-115226

LAW ENFORCEMENT EMPLOYEES
BENEVOLENT ASSOCIATION

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

A. FACTS

The essential facts and supporting exhibits are described in the Motion in this matter. This case concerns Respondent's refusal to furnish relevant and necessary information to the Union in response to two separate requests. On or about June 24, 2013, the Union requested that Respondent furnish to the Union, "copies of all witness statements that were received by [Respondent] concerning the February 10, 2013 write-up of Security Officer Tyler Fenstermaker, TM #34073, which led to his PIP and Career Decision Day." On or about August 14, 2013, the Union requested, "copies of all witness statements or notes taken of verbal witness statements relied upon by [Respondent] in making its decision on or about February 10, 2013, to issue Tyler Fenstermaker discipline, a PIP and a Career Decision Day." To the initial request, Respondent responded that it had no obligation to provide the requested information and that the request lacked clarity. Respondent did not respond to the Union's second request.

B. PROCEDURAL BACKGROUND

The Complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by refusing to furnish information to the Union. Respondent's Answer admits that it refused to provide the requested information. It denies, however, that the information is necessary for or relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit, denies that it had a duty to bargain, denies that the Union is a labor organization, and contends that the Union's request "was based upon an improper purpose." The information requested is presumptively relevant and necessary. It pertains to a unit employee and statements used to discipline the employee. As to the Union's labor organization status, Respondent previously admitted, and the Board found, that the Union is a statutory labor organization. Respondent's "improper purpose" argument also lacks merit and presents no issue of fact.

Respondent's refusal to furnish information stems largely from its refusal to recognize and bargain with the Union. In Case 04-CA-076289, Respondent contested the Union's certification and refused to bargain with the Union. The Board ordered Respondent to bargain. *Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem*, 358 NLRB No. 49, 2012 WL 1952191 (2012). Respondent petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the Board's decision, partly on the ground that the Board was improperly constituted when it ruled on Respondent's Exceptions to the Hearing Officer's Report in Case 04-RC-021833. Respondent's petition for review and the Board's cross application for

enforcement are pending in the D.C. Circuit while the U.S. Supreme Court decides the Board composition issue in *Noel Canning v. NLRB*, D.C. Cir. Nos. 12–1115 & 12–1153.

As noted in the Motion for Summary Judgment, Respondent’s Answer incorporated defenses it raised in Case 04–CA–076289, primarily its challenge to the Board’s authority at the time the Board certified the Union as the exclusive collective-bargaining representative of employees. This defense should not deter the Board from ruling on the Motion. As also noted in the Motion, Respondent previously admitted, and the Board found, that the Union is a labor organization within the meaning of Section 2(5) of the Act. Respondent’s denial to the legal conclusion in this case presents no issue of fact that would preclude the Board from granting the Motion in this case.

The remaining critical facts — the appropriate Unit, the Union’s certification, the request to bargain, and Respondent’s refusal — are undisputed, and the only issue is whether Respondent violated Section 8(a)(1) and (5) of the Act by refusing to bargain under the circumstances of this case.

C. ISSUE

Whether the Board should grant the Motion for Summary Judgment and order Respondent to furnish the requested information.

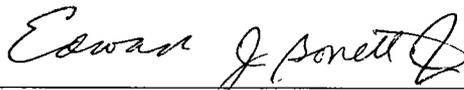
D. ARGUMENT

Information pertaining to the discipline of a unit employee is presumptively relevant and must be furnished upon request. *Nacco Material Handling Group*, 359 NLRB No. 139, 2013 WL 3168664 (2013); *Leland Stanford Junior University*, 307

NLRB 75, 80 (1992). Witness statements are likewise relevant and necessary. *Piedmont Gardens*, 359 NLRB No. 46, 2012 WL 6673080 (2012). Respondent has the burden of raising a defense, for example, on confidentiality grounds. *Id.*, 2012 WL 6673080, *3, citing *Washington Gas Light Co.*, 273 NLRB 116, 116 (1984). Respondent has not posed such a defense.

There are no genuine disputes as to any material fact in this case, and Respondent has not raised sufficient legal arguments in defense of its refusal to furnish information. Summary Judgment is appropriate and should be granted.

Signed at Philadelphia, Pennsylvania this 8th day of April, 2014.



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