

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

Advice Memorandum

DATE: July 6, 2015

TO: Ronald K. Hooks, Regional Director
Region 19

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

SUBJECT: Teamsters Local 117 (Imperial Parking) 554-1475
Case 19-CA-143328

The Region submitted this case for advice regarding whether the Union violated Section 8(b)(3) by refusing to provide the Employer, a manager and operator of parking garages, with copies of collective-bargaining agreements between the Union and other local parking management facilities. We conclude that because the Employer did not demonstrate the relevance of the requested information, the Region should dismiss the charge, absent withdrawal.

FACTS

Imperial Parking, d/b/a Impark (“Employer”) manages and operates parking garages and surface lots throughout the United States. Teamsters Local 117 (“Union”) was certified in July 2014 as the exclusive bargaining representative of the Employer’s parking attendants, maintenance employees, valets, and parking supervisors at 19 of the Employer’s facilities in Seattle, Washington. The Union and Employer began bargaining for an initial collective-bargaining agreement in November 2014.¹

On November 20, the Employer presented the Union with an information request seeking collective-bargaining agreements, within the past five years, between the Union and other Seattle parking providers and any parking provider in King County operating union and non-union locations. The Employer asserts that it sought this information so it could determine the industry standard regarding wages, hours, vacation time, and other benefits. On December 1, the Union refused the Employer’s request, noting that it was not its practice to provide other collective-bargaining agreements during bargaining and that the Employer’s request was overbroad because the Union had over 1,100 contracts.

¹ All remaining dates are in 2014.

In response to the Union's refusal, the Employer revised its information request to include only copies of Union collective-bargaining agreements with Seattle parking services providers within the past five years. The Union again refused, reiterating that it had no obligation to provide the Employer with its other collective-bargaining agreements because its agreement with the Employer would be based on the unique circumstances of the Employer's operation. The Employer requested the information again by email on December 15.

During the parties' bargaining session on December 17, the Employer proposed a "most favored nations" clause, whereby the most competitive terms provided to other employers would be offered to the Employer. The Union rejected the Employer's proposal, which led the Employer to believe that the Union did not have a "most favored nations" clause with other employers. In response, the Employer reiterated its asserted need to see where it stood concerning industry standards. The Union again refused to provide the Employer with other contracts, responding that it intended to negotiate a collective-bargaining agreement that would be specifically tailored to the Employer. The Union offered to disclose whether any Employer proposal was consistent with what the Union had agreed to with other employers, but the Employer rejected that proposal as unreasonable.

The Employer obtained, by its own means, one collective-bargaining agreement between the Union and another Seattle parking provider from 2010-2011. Through its review of that contract, the Employer ascertained that the Union's initial bargaining proposal was consistent with that 2010-2011 contract. The Union, however, did not state during bargaining that its initial proposal contained language from other collective-bargaining agreements.²

ACTION

We conclude that the Union did not violate Section 8(b)(3) because the Employer failed to establish that the Union's contracts with other area employers were relevant to, or were placed "in issue" during, the parties' negotiations. Thus, the Region should dismiss the charge, absent withdrawal.

Generally, a party engaged in collective bargaining must provide, upon request, information that is relevant for negotiating and administering a contract.³

² The Region informs us that although the parties have since entered into a contract, the Employer has declined to withdraw its Section 8(b)(3) charge against the Union.

³ *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-36 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979).

Information regarding unit employees' terms and conditions is presumptively relevant and must be produced unless the other party rebuts the presumption.⁴ A party seeking information concerning employees outside the unit, however, must establish the relevance of that information without the benefit of any presumption.⁵ The Board applies a liberal, "discovery-type" standard to determine whether requested information is probably or potentially relevant to statutory duties.⁶ But the requesting party must offer more than mere "suspicion or surmise" to be entitled to the information, and there must be more than a "mere concoction of some general theory which explains how the information would be useful."⁷ Otherwise, the requesting party would have "unlimited access to any and all data" from the other party.⁸

With regard specifically to requests that a union provide collective-bargaining agreements that it has with other employers, the Board has held that such agreements are relevant and disclosable if, during the course of bargaining, the union has placed those other contracts "in issue" by relying upon them as support for its proposals or in defending against the employer proposals.⁹ For example, in *Coca-Cola Bottling*, the Board found that the union violated Section 8(b)(3) by refusing to provide the employer with a copy of its collective-bargaining agreement with competitor Pepsi because the parties had placed the Pepsi contract "in issue" by discussing it at every meeting; indeed, the union asked the employer to adopt the

⁴ See, e.g., *Proctor Mechanical Corp.*, 279 NLRB 201, 204 (1986), quoting *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984).

⁵ *Id.* at 204.

⁶ *Acme Industrial Co.*, 385 U.S. at 437. See also, e.g., *A-1 Door & Building Solutions*, 356 NLRB No. 76, slip op. at 2 (2011), citing *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 359 (1994).

⁷ *Culinary Workers Union Local 226 (Caesar's Palace)*, 281 NLRB 284, 288 (1986), quoting *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 868 (9th Cir. 1977).

⁸ See *Southern Nevada Builders Ass'n*, 274 NLRB 350, 352 (1985) (finding the union was entitled to a list of association members bound to the parties' master agreement or "me-too" memorandum, but not a list of every association member; the union's suspicion that some members were engaged in double-breasted operations did not establish the relevance of the information). See also *Caesars Palace*, 281 NLRB at 288.

⁹ *Teamsters Local Union 688 (Coca-Cola Bottling Co.)*, 302 NLRB 312, 312 n.2 (1991).

entire Pepsi contract while refusing to furnish a copy of it to the employer.¹⁰ The Board concluded that the Pepsi contract was relevant to the Coca Cola bargaining not because it governed terms and conditions of employment in the same type of business, as found by the ALJ, but rather because the parties' discussion of the Pepsi contract during bargaining placed its terms "in issue."¹¹

In contrast, the Employer has not established the relevance of the Union's other collective-bargaining agreements to its negotiations. The Union repeatedly stated that its proposals were specific to the Employer and were not based on other contracts or an industry standard. And, the Union did not discuss the terms of its other collective-bargaining agreements during bargaining, except when refusing the Employer's request to review them. Thus, unlike in *Coca-Cola*, the Union did not ask the Employer to accept terms that the Union had bargained for with other employers. Furthermore, although the Employer was able to, on its own, obtain a copy of another Union contract and thereby surmise that the Union's initial proposals were similar to provisions contained in that contract, the Union never placed that or other contracts in issue by seeking to have the Employer accept terms *because of* their acceptance by other employers. Indeed, the Union disputed the relevance of other contracts by consistently refusing to discuss them during bargaining with the Employer.¹² Finally, neither the Employer's mere proposal of a "most favored nations" clause, nor the fact that information concerning industry standards would be *useful* to the Employer in preparing its bargaining proposals, makes the Union's contracts with other employers relevant under Board law.¹³

¹⁰ *Id.* at 312 n.2, 313.

¹¹ *Id.* at 312 n.2. *Cf. Somerville Mills*, 308 NLRB 425, 434, 440-41 (1992) (finding that union demonstrated relevance of collective-bargaining agreements the employer had with another union at other plants where the union had offered to consider adopting some terms therein and had supplied its own contracts with other employers in response to the employer's request), *enfd. mem. sub nom. NLRB v. I. Appel Corp.*, 19 F.3d 1433 (6th Cir. 1994).

¹² *Compare Somerville Mills*, 308 NLRB at 434, 440-41; *Coca-Cola Bottling Co.*, 302 NLRB at 312 n.2.

¹³ *See, e.g., UFCW, Local 770 (Roger's Poultry Co.)*, Case 21-CB-10532, Advice Memorandum dated October 20, 1989, at 3 (usefulness of other contracts in negotiating contract, including to compare wages and benefits paid by other employers and to determine whether other employers had "most favored nations" clauses, did not establish other contracts' relevance). *Bakery Workers Local 37 (Vons, a Safeway Company)*, Case 21-CB-13148, Advice Memorandum dated June 24, 2002, wherein Advice concluded that the union violated Section 8(b)(3) by failing to provide

Accordingly, the Region should dismiss, absent withdrawal, the charge alleging that the Union violated Section 8(b)(3) by refusing to provide copies of its other collective-bargaining agreements in response to the Employer's information request.

/s/
B.J.K.

employer copies of its other collective-bargaining agreements, is factually distinguishable from this case. There, although the employer sought to review the other contracts in part to decide whether to propose a "most favored nations" clause, it was also significant that the union had attached to its bargaining proposal a portion of an agreement it had with another employer, thus placing the other contract "into issue" during bargaining. *Id.* at 5.