

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18 (WELDED CONSTRUCTION, L.P.)

and

Case 08-CB-138850

GARY LANOUX, an Individual

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18 (PETE GOULD & SONS, INC.)

and

Case 08-CB-138909

GARY LANOUX, an Individual

**GENERAL COUNSEL'S RESPONSE IN OPPOSITION TO RESPONDENT
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18'S MOTION
FOR SUMMARY JUDGMENT**

Pursuant to Section 102.35(a)(8) of the Rules and Regulations of the National Labor Relations Board (Board), Counsel for the General Counsel respectfully submits this Response in Opposition to Respondent's Motion for Summary Judgment.

Respondent's Motion should be denied because there are genuine issues of material fact in these matters that require a hearing before an administrative law judge. Consequently, summary judgment is not appropriate.

I. BACKGROUND

The Consolidated Complaint in the above-captioned matters alleges, *inter alia*, that Respondent violated Section 8(b)(1)(A) when it failed to provide requested information to

Charging Party Gary Lanoux (Lanoux) where that information concerned the operation of Respondent's exclusive hiring hall and whether Lanoux was fairly treated regarding referrals. Specifically, as set forth in Amended Consolidated Complaint (Complaint) paragraph 18 and its subparagraphs, it is alleged that Lanoux requested the following information in relation to the referral of an operator (Operator) who worked on a job for pipe line contractor Welded Construction, L.P. (Welded): certified payroll documents; signed dues check off card; stewards' report; Business Agent report; date of urinalysis test; and verification of Welded's contribution to Respondent's Health & Welfare, Pension, Apprenticeship, Safety & Education, Pipeline Training, LMCT and EPEC Funds. Furthermore, in Complaint paragraph 19 and its subparagraphs, it is alleged that Lanoux requested the following information in relation to a pipe line job being done by pipe line contractor Pete Gould & Sons (Pete Gould): the names, dates of employment and position of the "key men" hired by Pete Gould; and any requests Pete Gould made to Respondent for the referral of specific operators.

On August 20, 2015, the Board issued a decision in *International Union of Operating Engineers Local 18 (Precision Pipeline, LLC)*, 362 NLRB 176 (August 20, 2015). That case involved Respondent, Lanoux and charging party Stephen Wiltse. The *Precision Pipeline* Board agreed with the administrative law judge that Respondent had not violated Section 8(b)(1)(A) when it refused to provide Lanoux and Wiltse with requested documents known as pre-job reports. *Id.* The Board concluded that Respondent had a legitimate reason for not disclosing pre-job reports upon request, namely, that the information could be used to the detriment of itself and unionized contractors were the information contained in the pre-jobs to fall into the hands of non-union contractors. *Id.* Wiltse and Lanoux could not offer any particular interest in the information contained in the pre-job reports. *Id.* at *9. Under such circumstances, the Board

agreed with the administrative law judge that Respondent's refusal to provide Wiltse and Lanoux with the pre-job reports was not arbitrary, and therefore, not unlawful. *Id.* at *1.

One thing that is important to understand about *Precision Pipeline* for the purpose of deciding Respondent's Motion is that it did not close the book regarding all requests for pre-job reports or for the information contained therein. To wit,

one can imagine a case where what is written on the pre-job report might, for example, impact an employee's dispute with the employer...And in that case, the issue would be whether the union's unwillingness to share that pre-job report – or at least, that portion of the pre-job report – could be deemed arbitrary in light of the centrality of it to the employee's grievance.

Id. at *10. Hence, *Precision Pipeline* leaves open the possibility that a requester could demonstrate a particular need for information contained in the pre-job that would outweigh Respondent's reason for non-disclosure.

II. LEGAL STANDARDS

A. Motion for Summary Judgment

In deciding a motion for summary judgment, the Board uses the standards set forth in Rule 56 of the Federal Rules of Civil Procedure. *Newtown Corp.*, 280 NLRB 350 (1986).

Pursuant to Rule 56(a), summary judgment is appropriate if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” In making this determination, the evidence “must be viewed in the light most favorable” to the non-moving party. *Eldeco, Inc.*, 336 NLRB 899, 900 (2001); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

B. Exclusive Hiring Halls and Information Requests

The Board has long held that when operating an exclusive hiring hall, “absent some substantial reason for refusing disclosure, a union is bound to comply with requests for referral

data when they may serve some useful purpose related to fair treatment.” *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1303 (1992).

III. RESPONDENT’S MOTION SHOULD BE DENIED BECAUSE GENERAL COUNSEL’S EVIDENCE WILL DEMONSTRATE (1) THAT LANOUX’S REQUESTS CONCERNED THE QUESTION OF WHETHER HIS TREATMENT WAS FAIR AND (2) THAT RESPONDENT’S REFUSAL TO PROVIDE THEM WAS ARBITRARY

Respondent argues that it is entitled to judgment as a matter of law for two reasons. First, Respondent argues that Lanoux’s requests do not involve or touch upon the operation of Respondent’s exclusive hiring hall. Second, Respondent contends that in light of the *Precision Pipeline* decision, it has not arbitrarily refused to provide Lanoux with the information he requested as set forth in the Complaint.

This case involves the intersection of two collective bargaining agreements: the National Pipe Line Agreement (NPLA) as negotiated by the International Union of Operating Engineers and the Ohio Highway Heavy Agreement (HHA) as negotiated by Respondent. The HHA contains the rules and policies of Respondent’s exclusive hiring hall. The NPLA, when it applies, obligates its signatory members to utilize the exclusive hiring hall of the local union having geographical jurisdiction over the project (if it operates an exclusive hall), while adding a number of special referral/hiring rules. General Counsel will demonstrate at trial that Lanoux’s requests, some of which relate to information concerning referral provisions in the NPLA, concern the operation of Respondent’s hiring hall and whether Lanoux was fairly treated in referrals. Respondent has repeatedly denied that the information is in any way related to its exclusive hiring hall. (See Motion pp 12-13)¹ Therefore, Respondent’s Motion should be denied

¹ Respondent incorrectly states that the Board has circumscribed the scope of a union’s duty to provide information to instances where what is being requested is “referral data.” (Motion p.12) The case cited by Respondent for this proposition, *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300 (1992), says nothing of the sort. Local 513 simply happened to be a case about referral data, namely: the request there was for information about the

because there is a genuine dispute as to whether the information requested by Lanoux is concerned with the operation of Respondent's exclusive hiring hall.

With regard to Respondent's argument regarding *Precision Pipeline*, at the outset it is important to note that none of Lanoux's requests in this matter are for pre-job reports. Furthermore, a number of the documents Lanoux requested are not part of any pre-job reports nor do they reflect information contained in any pre-job reports. For example, as alleged in paragraph 19(C) of the Complaint, Lanoux requested a contractor's requests to Respondent for the referral of specific Local 18 operators. These documents are not in any way related to pre-job reports. Likewise, Lanoux's request for the dues check off form of the Operator, as alleged in Complaint paragraph 18(C), is not a document in a pre-job report nor does it reflect information that can be found in the pre-job report.² It is telling that Respondent did not address these requested items in its Motion.

Finally, where the information requested by Lanoux is contained in the pre-job reports, there is a genuine dispute of fact as to whether his reason for needing the information outweighs Respondent's basis for non-disclosure. As explained by Judge Goldman in *Precision Pipeline*,

...there may be some situations where an employees' [sic] request for the pre-job report could be central to his grievance or concern...[where] the 'rationality of the union's policy must be evaluation in terms of the importance of the requesting employee's interest in the pre-job report...

In this connection, General Counsel intends to present evidence that Lanoux needed the information in the pre-job report to police provisions in the NPLA which impact the operation of Respondent's exclusive hiring hall.

referrals of particular hiring hall applicants. Under Respondent's theory, a union would not have to provide information about the position of particular individuals on the hiring hall out-of-work list since that is not "referral data." Obviously, that is simply incorrect. *See, e.g., Local No. 324, International Union of Operating Engineers*, 226 NLRB 587 (1976) (member was entitled to the names and other information of individuals on either side of him on the out-of-work list).

² With the possible exception of the Operator's name, which, standing alone would not raise the same issues that the Board was concerned with in *Precision Pipeline*.

IV. CONCLUSION

For the reasons set forth herein, Counsel for the General Counsel respectfully requests that Respondent's Motion for Summary Judgment be denied in its entirety.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing was filed electronically with the Division of Judges of the National Labor Relations Board and served by electronic mail, as designated below, on this 15th day of September 2015:

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