

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KANKAKEE COUNTY TRAINING CENTER FOR
THE DISABLED, INC.,

Respondent

and

Cases 25-CA-166729
25-CA-166765
25-CA-166785
25-CA-168799
25-CA-168802

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME),
COUNCIL 31, AFL-CIO

Charging Party

**BRIEF OF THE CHARGING PARTY IN RESPONSE
TO RESPONDENT'S EXCEPTIONS**

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The Administrative Law Judge correctly found that the Employer failed to provide the Union with requested information in violation of Section 8(a)(5) of the Act. 1

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The Administrative Law Judge correctly found that the Employer failed to provide the Union with requested information in violation of Section 8(a)(5) of the Act.

The Employer excepts to the Judge's finding that the Employer violated Section 8(a)(5) by failing to provide the Union with personnel files, employee evaluations, and records of past discipline of all bargaining unit employees and of Priscilla Williams' personnel file, evaluation and past discipline.

Union Staff Representative Jeff Dexter in a November 16, 2016 letter emailed to then-KCTC Vice President Diana Graham requested 16 itemized categories of information in connection with Williams' discipline, including "[a] copy of each of the affected employee's evaluations and personnel file," and "[d]ocumentation concerning all the affected employee's prior discipline, if any." GC Ex. 7 (emphasis in original). On the evening of Tuesday, November 17, 2016, Graham sent an email to Dexter in response to such letter stating: "Meeting about this is not a problem at all. We scheduled the pre discipline meeting for Wednesday for that reason. I will give you copies of the statements and the policy violated tomorrow. The meeting is scheduled Wednesday Nov 18 at 3:30." Resp. Ex. 1. Other than her reference to statements and policy, Graham's email did not respond to the 16 items of information requested in Dexter's letter. At the disciplinary meeting held with respect to Priscilla Williams on November 18, 2015, Human Resources Director Julie Galeaz gave the Union copies of the statements she had collected and of policies the Employer asserted Williams had violated, but none of the other requested documents. Tr. 109.

The Judge found that Section 8(a)(5) requires an employer to furnish a union representing its employees with information that is relevant to the performance of the union's bargaining responsibilities. He found that the personnel files, evaluations, and past discipline of Williams and all bargaining unit employees would have been relevant to the Union in attempting to establish

disparate treatment of Williams at the November 19, 2015 disciplinary meeting and that the Employer violated Section 8(a)(5) of the Act by failing to provide the Union with such information prior to the meeting. ALJ Decision at 11-12.

An employer has an obligation to provide a union that is an exclusive bargaining representative with information that is necessary for and relevant to the union's performance of its collective bargaining obligations. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The Board and the courts have consistently held that information relating to the terms and conditions of employment of bargaining unit employees is presumptively relevant and that no specific showing by the union of relevance or particular necessity is required. Rather the burden falls on the employer to prove a lack of relevance. *NLRB v. Acme Industrial Co.*, 385 U.S. 432; *Graphic Communications Local 13 v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979); *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863, 866-7 (9th Cir. 1977); *AK Steel*, 324 NLRB 173, 183 (1997).

The Board has repeatedly held that requested employee disciplinary records are presumptively relevant and must be furnished upon request, unless the relevance is rebutted. *Antioch Rock & Ready Mix*, 328 NLRB No. 116, slip op. at 1 (1999); *Prime Energy Limited Partnership*, 328 NLRB No. 143, slip op. at 1 (1999); *General Dynamics Corp.*, 270 NLRB 829 (1984).

The Board has also required employers to provide unions with personnel files of bargaining unit employees. See *Saginaw General Hospital*, 320 NLRB 748 (1996); *Leland Standard Junior University*, 307 NLRB 75, 80 (1992); *The Grand Rapids Press*, 331 NLRB 296 (2000) (requiring employer to produce personnel files of 22 bargaining unit employees based on finding that such information is presumptively relevant to collective bargaining and that the employer had failed to

show a lack of relevance); *Bloomsburg Craftsmen*, 276 NLRB 400, 402 (1985) (requiring production of personnel file where employee discipline was at issue).

Other than Graham's email of November 16 saying that she would give Dexter the statements and policies, Graham did not respond to Dexter's information request letter. The Employer never provided the Union with any of the requested information other than the employee statements and policies given the Union at the November 13 disciplinary meeting, and bargaining unit lists given the Union pursuant to other requests. Tr. 107. The Employer did not provide the Union with the personnel files of Williams and other bargaining unit employees, the evaluations of Williams and other bargaining unit employees, or the records of past discipline issued to Williams and other bargaining unit employees. The Employer presented no evidence to rebut the presumption that the requested information is relevant to collective bargaining.

The Judge thus correctly found that the Employer violated Section 8(a)(5) by failing to provide the Union with personnel files, employee evaluations, and records of past discipline of all bargaining unit employees and of Priscilla Williams' personnel file, evaluation and past discipline.

Conclusion

For the foregoing reasons, the Judge correctly found that the Employer violated Section 8(a)(5) of the Act by failing to provide the Union with requested information relevant to the suspension and discharge of Priscilla Williams, including the personnel files, evaluations and past discipline records of Williams and all bargaining unit employees.

Respectfully submitted,



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Dated: November 7, 2016

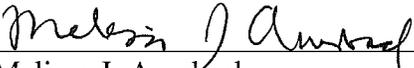
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CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that on November 7, 2016, she caused the foregoing **Brief of the Charging Party in Response to Respondent's Exceptions** to be filed electronically with the Office of the Executive Secretary and that on the same day she caused a copy of such document to be served electronically on the following:

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