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8 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**

10 In the matter of

Case No. 28-CB-182296

11  
12 GNLV CORP., d/b/a GOLDEN  
13 NUGGET LAS VEGAS

**POST HEARING BRIEF**

14 Charging Party,

15 vs.

16  
17 INTERNATIONAL UNION OF  
18 OPERATING ENGINEERS LOCAL  
19 501, AFL-CIO,

20 Respondent.

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1 **I. INTRODUCTION**

2 This post-hearing brief is filed on behalf of the charged party. International  
3 union of Operating Engineers, Local No. 501, AFL-CIO (“Charged Party” or  
4 “Union”) in support of its position that it did not violate Section 8(b)(3) of the  
5 National Labor Relations Act by denying some of GNLV Corp. d/b/a Golden Nugget  
6 Las Vegas’ (“Employer” or “Charging Party”) request for information.

7 It is well settled that employers and unions have a duty to bargain in good faith  
8 and when a party requests information, the responding party is obligated to supply  
9 relevant information within a reasonable time. However, a party is not required to  
10 provide documents that are not relevant, would be too burdensome to provide, are so  
11 vague and ambiguous that a party is unable to identify what is requested, or  
12 information that is requested in bad faith.

13 In the instant matter, the evidence shows that all four of the above reasons to  
14 withhold information are present. The Employer’s request was vague and ambiguous  
15 and the Employer never defined the vague and ambiguous terms despite numerous  
16 requests by the Union to do so. The Employer has not presented any evidence that the  
17 information requested is relevant. The Union explained why the request was too  
18 burdensome and before the parties could agree on narrowing the issue, the Employer  
19 filed the instant ULP. And finally, there is evidence that the request was made in bad  
20 faith by the Employer’s attorneys – as the Employer made no such request on its own.

21 On January 23, 2017, the parties to this matter conducted a hearing over the  
22 issue of whether Respondent violated the Act by failing to provide requested  
23 information to the Employer. This brief is submitted on behalf of Respondent IUOE  
24 Local 501, which contends that it did not wrongfully withhold requested information  
25 and therefore did not violate Section 8(b)(3) of the Act.

26 **II. STATEMENT OF FACTS**

27 **A. PREVIOUS PROCEEDINGS REGARDING THE SAME ISSUE**

28 During the trial, Tom O'Mahar testified that he received similar information

1 requests from the Employer's attorneys prior to the instant request. In those requests  
2 Greg Kamer, the Employer's attorney, requested a list of grievances and arbitrations  
3 such as those requested in the instant information request. (Tr. 32:15-22.) In the  
4 previous information request, Mr. O'Mahar testified that he provided some arbitration  
5 agreements and grievances upon request, but that the matter was ultimately resolved.  
6 (Tr. 34:12-15.) However, immediately after the resolution, Mr. Kamer requested the  
7 same information.

8 **B. GOLDEN NUGGET'S REQUESTS FOR INFORMATION**

9 On February 25, 2016, the employer requested the following information:

10 "1. Copies of labor contracts, side letters, and/or memorandum  
11 agreements between Local 501 and any company operating in Las Vegas,  
12 Nevada and/or the surrounding area that are currently in place and/or  
13 expired within the last two (2) years and feature similar language to that  
14 proposed by Local 501 to Golden Nugget Las Vegas;

15 "2. A listing of all grievances filed by Local 501 within the last five  
16 (5) years concerning similar language to that proposed by Local 501 to  
17 Golden Nugget Las Vegas against company operating in Las Vegas,  
18 Nevada and/or the surrounding area, including the nature of the grievance  
19 and the resolution, including whether the matter was resolved through  
20 arbitration; and

21 "3. Copies of all arbitration decisions involving Local 501 and any  
22 company operating in Las Vegas, Nevada and/or the surrounding area,  
23 which interprets similar language to that proposed by Local 501 to  
24 Golden Nugget Las Vegas."

25 [G.C. Exh. 2, emphasis added.]

26 On March 17, 2016, the Union responded to the employer's request. [G.C. Exh.  
27 3.] As to Item 1, the Union provided all the documents requested and sent an  
28 invoice for payment for the copying costs. While the Union requested that \$.30 per  
page was appropriate given the copying costs and labor required to comply with the  
request, the employer later offered no more than \$.13 per copy because that's what is  
charged at Fed Ex Locations. This issue was not directly before the ALJ, however,  
there was some discussion on whether the Charging Party offered to pay for Requests  
Nos. 2 and 3.

1 As to Item 2, the Union responded, in pertinent part, as follows:

2 "...We consider this to be an overly broad request in that, as stated in our  
3 response to Item 1, almost anything can be considered as 'similar in  
4 nature' [sic] Additionally we do not maintain a listing of grievances so  
5 the cost of producing a listing would be prohibitive. With that being  
6 said, we are willing to meeting with you to discuss this request further.  
7 Without such discussion we cannot fulfill this request."

8 As to Item 3, the Union similarly responded, in pertinent part, as  
9 follows:

10 "...We consider this to be an overly broad request in that, almost  
11 anything could be considered as 'similar language' additionally we do not  
12 maintain records of arbitrations discreet from the grievance files so the  
13 cost of producing the requested information would be prohibitive. With  
14 that being said, we are willing to meet with you to discuss this request  
15 further. Without such discussion we cannot fulfill this request."

16 On April 21, 2016, the employer responded by stating as follows:

17 "While the company is amenable to discussing the procurement of all  
18 relevant items, it believes Local 501 should at least provide arbitration  
19 decisions readily available due to recent exposure to the matters prior  
20 any discussions related to 'prohibitive costs.'

21 "...In the future, if the proposed fee is unacceptable, the company  
22 respectfully requests that Local 501 make its documents available to the  
23 company to sign out, with the company to return the documents within  
24 24 hours.

25 "It is the company's goal to get the substance of the issues and create a  
26 sustainable collective bargaining agreement. Unfortunately, it appears  
27 Local 501's goal is to delay the company's progress in doing so. If this is  
28 not the case, please let us know when you are ready to bargain in good  
faith by providing the requested documents that are obtainable without  
requirement of a search party."

[G.C. Exh. 4, emphasis added.]

29 On May 31, 2016, the Union responded to the employer's renewed demand for  
30 information. [G.C. Exh. 5.] On this date, the Union pointed out the following issues  
31 with the requested information:

32 "...it is not clear to us what information you are requesting. Your request  
33 states that you are looking for information related to grievances and  
34 arbitrations filed in regards to contract language that is 'similar to what  
35 we have proposed at the Golden Nugget negotiations. At this time I have  
36 no idea what the intent of the word 'similar' is or how to make a  
37 determination if language in one labor agreement is or isn't 'similar' to

1 what was proposed at the Golden Nugget negotiations and therefore  
2 warrant inclusion under your request.

3 "Additionally, as I stated to you on May 18, the information that you are  
4 requesting, assuming we could define what it is, is not readily available.  
5 We do not, through our normal work processes, track and maintain  
6 records regarding our grievances and arbitration Awards. We have all  
7 the files but they are not cataloged in any way which would be helpful in  
8 identifying the information you are requesting, again assuming we can  
9 determine what that is.

10 "Even if we can get a workable definition of 'similar', or any other  
11 threshold for comparison to existing language, we would then have to go  
12 back through over thousands files to see if they fall within the bounds of  
13 your request. This would be very expensive and time consuming and  
14 considering the limits of our existing staff, virtually impossible to  
15 accomplish in a short period of time. We would definitely require  
16 compensation for our expenditures in order to accomplish this task.

17 "Considering the fact that we have met resistance from the Golden  
18 Nugget and their legal counsel regarding reasonable compensation on  
19 information that we have already provided; that we do not have a clear  
20 understanding of what has been requested; and that the additional  
21 requests for information are extremely burdensome and would be  
22 expensive to comply with; we have no way of proceeding with your  
23 additional information request at this time. If you would like to meet and  
24 discuss this further issue we are open to doing so."

25 [G.C. Exh. 5, emphasis added.]

26 The employer responded on August 1, 2016, as follows:

27 "Following our discussion on July 27, 2016 and in an effort to offer  
28 clarification regarding the documents the company seeks, the company  
will narrow the request to only those grievances and arbitrations of hotels  
and casinos operating in Las Vegas, Nevada and/or the surrounding  
area. Further, with regards to the meaning of the word 'similar' as noted  
in the May 31, 2016 letter, our conversations have detailed instances  
wherein you have conceded language in the proposals is similar, even if  
slightly nuanced, to other contracts in existence, so we hope you are able  
to provide documents matching that level of similarity.

"With that clarification provided, the company is still seeking  
documents related to the above-referenced request and still believes  
Local 501 should at least provide arbitration decisions *readily available*  
before participating in any discussions related to 'prohibitive costs.' You  
and I have also had dialogues during negotiations in which you have  
referenced arbitrations that addressed a discussed scenario – these are the  
types of documents we consider readily available, as you would  
hopefully be able to locate those files without having to review thousands  
of other files.

"Additionally, we still stand by our offer to send a representative to  
review all files for relevant grievances in arbitration decisions and sign

1 out those documents for 24 hours, so the company can make its own  
copies and save Local 500 the labor costs."

2 [G.C. Exh. 6, emphasis added.]

3 In the August 1, 2016 letter, the employer also demanded that the request be  
4 responded to no later than Wednesday, August 10, 2016. On August 5, 2016, the  
5 Union responded, as follows:

6 "While I would agree that, in my opinion we have proposed language, in  
7 some instances, which is similar to that agreed to at other properties in  
8 Las Vegas, what I consider similar and what you consider similar may  
not be the same so I am not certain I fully understand your request.

9 "In the additional matter of the compensation of the Union for efforts  
10 expended to try and comply with your request, the amount of  
11 compensation due to the Union for efforts already made to comply with  
12 this particular request is still in dispute. I believe it is unreasonable for  
you to expect us to expend additional resources and just assume that you  
would compensate us appropriately while you have failed to do so in the  
past.

13 "Additionally, while I appreciate your offer to allow a member of your  
14 staff to just rifle through our files I do not believe that is a reasonable  
resolution to this issue."

15 [G.C. Exh. 7, emphasis added.]

16 On August 12, 2016, the employer responded, as follows:

17 "...while we are able to ask questions and seek clarification on the intent  
18 behind a particular provision or specific language, we have a legitimate  
19 concern about how the language will be interpreted by members and  
20 enforced once ratified. Past negotiations with other properties have  
21 shown a realized risk of the Union distorting the agreed-upon language,  
resulting in numerous grievances. Sample grievances and arbitration  
22 decisions of comparable language could show us which proposed  
23 language requires clarifying language or a complete redraft.

24 "As you have continued to refuse to provide us with any relevant  
25 information with respect to our request for grievances and arbitration  
26 decisions, including examples that are readily available based on recent  
27 memory or 'similar' based on your interpretation, we must now file a  
28 charge with the National Labor Relations Board."

[G.C. Exh. 8, emphasis added.]

On August 15, 2016, the employer filed its charge, as threatened, against the  
Union alleging that "within the previous 6 months, the above-named labor  
organization has failed and refused to bargain in good faith with the employer" that

1 resulted in coercion, interference, and restraint of employee's §7 rights. [G.C. Exh.  
2 1(a).]

3 **C. SUMMARY OF TESTIMONY AT TRIAL**

4 **1. Testimony of Tom O'Mahar**

5 Thomas O'Mahar is the president of Local 501 and is the lead business  
6 representative. (Tr. 16:23-17:1.) Mr. O'Mahar estimated that there are hundreds of  
7 grievances filed each year in the southern Nevada area. (Tr. 17:24-18:2.)

8 Mr. O'Mahar estimated that the number of arbitrations decisions in a given year are  
9 around four to six. (Tr. 18:12-25.) Mr. O'Mahar testified that once the arbitration  
10 decision is received, it goes into the grievance file along with all the other paperwork.  
11 (Tr. 19:1-4.) Mr. O'Mahar testified that active grievances and arbitrations are kept by  
12 the actual business representative or agent, however, older arbitration decisions and  
13 grievances are filed away in a storage unit. (Tr. 19:25-21:14.)

14 Mr. O'Mahar testified that from the end of 2015 or the beginning of 2016, he  
15 had been engaged in contract negotiations with the Golden Nugget. (Tr. 22:9-23.) On  
16 or about February 25, 2016 he received an information request which he testified he  
17 was unable to comply with for various reasons.

18 Based on the information request, the employer later requested for all readily  
19 available arbitration decisions. Mr. O'Mahar testified that because there was no  
20 definition as to what similar language was being requested, he was unable to fulfill  
21 the request.

22 Mr. O'Mahar testified that he had been a business representative on behalf of  
23 the Union for approximately 10 years and had dealt with Greg Kamer occasionally.  
24 Mr. O'Mahar and Mr. Kamer have bargained for first contracts and successor  
25 contracts over those 10 years.

26 Mr. O'Mahar testified that in order to comply with the requests for grievances  
27 and arbitrations he would have to pull all the archives back to the start date which  
28 included several bankers' boxes much of which are located in a storage shed. He

1 would then have to go through each file to find grievances and arbitrations as the  
2 boxes are not marked stating arbitrations or grievances.

3 Mr. O'Mahar testified that Greg Kamer never sent anything in writing  
4 explaining what language he believed was similar. Mr. O'Mahar stated that he  
5 responded by letter stating that the requests were overly burdensome and vague  
6 because they did not define the similar language being requested. Mr. O'Mahar  
7 testified that he was hoping that by providing the contracts responsive to Request  
8 No. 1 of the February 25 letter that Mr. Kamer would identify the actual language by  
9 which he was requesting the arbitration and grievances. (Tr. 35:15-36:2.)

10 Mr. O'Mahar testified that at no point in time did anybody on behalf of the  
11 employer provide a definition of "similar language" or definition of what was meant  
12 by "Las Vegas and/or the surrounding area" (Tr. 36:17-37:3.). Mr. O'Mahar testified  
13 that in addition to employees in Las Vegas itself, the Union represents employees  
14 throughout southern Nevada including Laughlin. (Tr. 37:4-8.)

15 Mr. O'Mahar testified that the costs were prohibitive because it required an  
16 actual agent or business representative to look through the files to find the actual  
17 grievances and arbitrations that would comply with whatever definition is given to  
18 "similar language." (Tr. 37:18-38:9.)

19 Prior to the file being stored, a grievance and/or arbitration stays with the agent  
20 who is handling it the entire time until it is completed. Only then is it filed which  
21 later includes being sent to storage. (Tr. 38:23-40:13.) There is no index that could  
22 be used just to quickly determine which arbitrations and grievances would be  
23 available, let alone having to review the actual arbitration and grievance to determine  
24 whether it complies with the instant request. (Tr. 41:7-42:12).

25 Mr. O'Mahar testified that the grievance files often contain confidential  
26 information and that was the reason that he did not want a staff member from  
27 Mr. Kamer's law office to look through the files and determine what documents are  
28 responsive. (Tr. 43:20-46:14.)

1 Mr. O'Mahar testified that in addition to casino employees, the Union  
2 represents other types of employees. (Tr. 48:11-49:2.)

3 **2. Testimony of Kaitlin Ziegler, Esq.**

4 The employer did not call a representative from within the company, however,  
5 they called an associate attorney named Kaitlin Ziegler from the Kamer law firm.  
6 Ms. Ziegler testified that the parties are currently negotiating a first contract and she  
7 is the official note taker for the process. (Tr. 55:11-24.) Ms. Ziegler also testified  
8 that she helped draft the request for information that is at issue in the instant matter  
9 (Tr. 55:25-56:5.)

10 Ms. Ziegler testified that her office offered options to the Union in order to  
11 provide the requested information, including having a staff member come and make  
12 copies of the information it deemed relevant. (Tr. 57:14-25). The reason for the  
13 information request was because this was a first contract and her office did not  
14 necessarily know the intent behind the proposals and needed to see how those  
15 proposals were grieved in prior cases and how third parties assessed those proposals  
16 and arbitrations. (Tr. 58:1-14.) Ms. Ziegler testified that in spite of having no  
17 personal involvement in the other negotiations with other employees or any "similar  
18 language," she was able to make this determination. (Tr. 60:14-61:5.) Ms. Ziegler  
19 further explained that the request was needed to see the history of how these  
20 proposals were interpreted by other parties in which the Union proposed the same  
21 language, without offering what that same language would be. (Tr. 64:7-65:6.)  
22 Ms. Ziegler was instructed by Greg Kamer to prepare the information request and  
23 specifically what information to request, without any interaction with the actual  
24 employer. (Tr. 68:25-69:19).

25 Ms. Ziegler's law firm maintains a website in which it generates income from  
26 hosting a database of arbitration decisions. She testified that she is unaware of the  
27 process for which publishing and arbitration decision is made and assumes they are  
28 public and able to be posted on the money generating website for the law firm. (Tr.

1 70:10-73:6.)

2 Ms. Ziegler stated that her reason for requesting the information was to better  
3 understand the proposals being made by the Union (Tr. 73:9-74:3). However,  
4 Ms. Ziegler admitted that most of the proposed provisions were not confusing on  
5 their face. (Tr. 74:4-75:19.) In fact, Ms. Ziegler did not testify as to any particular  
6 provision in which she or the employer were not clear on the meaning of the terms or  
7 the proposal. (Tr. 78:17-79:24.)

8 Ms. Ziegler attempted to explain that the information is relevant from other  
9 grievances and arbitrations because if there is a pattern of multiple people bringing  
10 up the same grievance then there is an issue with the interpretation of the proposal  
11 and the law firm might want to redraft it completely. (Tr. 81:10-17.) However,  
12 Ms. Ziegler admitted that such concerns are purely speculative. (Tr. 81:18-23.)

13 To the heart of the matter at issue, Ms. Ziegler admitted that it was not the  
14 employer that had any concerns with contract language but that "we, the firm, have  
15 had some issues with specific proposals in the past, but overall we have a concern  
16 about even more proposals that we don't know the history of, that maybe they've been  
17 tweaked or they might be similar in nature and we don't know what the history is to  
18 those proposals." (Tr. 82:13-18.)

19 Ms. Ziegler then discussed issues of grievances with a company called Brady  
20 Linen in which she agreed that Mr. Kamer was upset by the grievances being brought  
21 by the Union in those instances. (Tr. 85:4-25.) Even still, Ms. Ziegler could not  
22 provide any specific examples in which the employer was concerned with the  
23 contract language being proposed. (Tr. 86:24-87:18.)

24 Even though Ms. Ziegler was the official note taker for the bargaining  
25 sessions, neither she nor the employer provided any of those notes to the Union. (Tr.  
26 89:2-90:5.)

27 **3. Testimony of Richard Lile**

28 The Union called Richard Lile who is the actual agent organizer handling the

1 Golden Nugget contract. (Tr. 97:6-18.) Mr. Lile stated that Greg Kamer is the chief  
2 spokesperson on behalf of the employer in negotiations for the contract and that he  
3 has spoken to Mr. Kamer on numerous occasions. (Tr. 97:19-24.) Mr. Lile stated  
4 that he has raised concerns about the information requests on numerous occasions to  
5 Mr. Kamer both in person and over the phone. (Tr. 97:25-98:9.) Mr. Lile informed  
6 Mr. Kamer that the information request was vague and overly broad and asked  
7 Mr. Kamer to narrow it down to specific articles and collective bargaining  
8 agreements so that they could understand the "similar language" being requested (Tr.  
9 98:10-15.)

10 Mr. Lile testified that in discussions with Mr. Kamer about the information  
11 requests, he expressed the problems with confidential information being included in  
12 those files as a reason as to why an employee of the law firm could not come and  
13 look through the individual files (Tr. 98:19-99:13.) Mr. Lile reported that Mr. Kamer  
14 said he would be willing to narrow the scope down but that the two parties were  
15 never able to agree on what the scope actually was. (Tr. 99:16-20.)

16 Mr. Lile testified that active grievances were approximately 120 in the  
17 southern Nevada area. (Tr. 100:2-5.) While Mr. Lile stated he spoke regarding  
18 narrowing the requests with Mr. Kamer, the parties could never come to an  
19 agreement on how the information could be narrowed so that the Union would be  
20 able to provide the requested information (Tr. 100:11-101:9.)

### 21 III. ARGUMENT

#### 22 A. UNIONS AND EMPLOYERS HAVE A DUTY TO FURNISH 23 INFORMATION

24 It is well-settled that an employer's duty to bargain includes the duty to provide  
25 relevant information required by a bargaining representative to properly represent its  
26 members. *See Detroit Edison Co v. NLRB*, 440 US 301, 303 (1979) (citations  
27 omitted); *see also NLRB v. Acme Industrial Co*, 385 US 432, 435-36 (1967).  
28 Information concerning wage rates, job descriptions, and other information pertaining

1 to employees within the bargaining unit is presumptively relevant. *Curtiss-Wright*  
2 *Corp.*, 145 NLRB 152 (1963), *enfd.* 347 F.2d 61 (3d Cir. 1965).

3 The duty to furnish information is not an obligation imposed on employers  
4 alone; a similar duty is owed by unions. The principle was established in *Printing*  
5 *and Graphic Communications Local 13 ("Oakland Press Co.")* 233 NLRB 994,  
6 (1977), *aff'd*, 598 F.2d 267 (D.C. Cir. 1979). The press room employees at the  
7 employer's newspaper plant were represented by a local union that had agreed in the  
8 collective bargaining contract to attempt to supply the company with extra employees  
9 to handle overload work at straight time rates to avoid overtime wages. In practice,  
10 the Union gave the assignments to regular employees, whom the company had to pay  
11 at overtime rates. The employer questioned whether the Union was making a good  
12 faith effort to find extra employees before giving overtime work to regular  
13 employees. During negotiations for a new labor contract the employer requested  
14 information from the Union regarding its referral system, which the Union refused to  
15 disclose. The employer then filed a charge alleging a violation of § 8(b)(3).

16 The Board held that "a union's duty to furnish information relevant to the  
17 bargaining process is parallel to that of the employer." *Id.* at 996 (quoting dictum in  
18 *Tool and Diemakers Lodge 78*, 224 NLRB 111 (1976)). Reasoning that it was  
19 essential for the employer, in structuring its economic demands, to know how the  
20 referral system operated, as well as the actual availability of extra workers for  
21 overload work, the board concluded that the information sought was relevant to the  
22 bargaining process and that the Union violated its statutory bargaining obligation by  
23 refusing to disclose. The DC circuit affirmed and held that just as an employer is  
24 required to disclose information during bargaining, a union "is likewise obliged to  
25 furnish the employer with relevant information." *Oakland Press*, 598 F.2d at 271.

26 In another case, the board found that a labor union unlawfully refused to  
27 respond to information requests about its reorganization and merger with another  
28 union. Analogizing the situation to one involving an *alter ego* of the employer with

1 whom a union has a collective bargaining relationship, the board found that an  
2 employer may seek information pertaining to an outside union when it has an  
3 objective, factual basis for believing such information would be relevant in  
4 determining the Union with which it has a collective bargaining agreement  
5 relationship. *Service Employees Local 715 (Stanford Hospital)*, 355 NLRB No. 65  
6 (2010).

7 In other decisions since *Oakland Press*, the board has required unions to turn  
8 over relevant information to employers in various situations. Although decisions  
9 involving employer requests for information controlled by unions are not plentiful,  
10 the decided cases disclose that employers may obtain hiring hall and staffing  
11 information (*Oakland Press, supra*, 233 NLRB 994), information pertinent to union  
12 pension and welfare plans (*Hospital and Health Care Employees Dist. 1199-E (Sinai*  
13 *Hospital of Baltimore)*, 248 NLRB 631 (1980)), collective bargaining agreements  
14 with other employers<sup>1</sup> (*Hotel Employees Local 355 (Doral Beach Hotel)*, 245 NLRB  
15 774 (1979)), and a list of employees on a union out of work list. (*Asbestos Workers*  
16 *Local 80 (West Virginia Master Insulators Association)* 248 NLRB 145 (1980)).

17 As stated in *Detroit Free Press*, the Union's duty is parallel to the employer's  
18 duty in providing information. As for the employer duty, where a union requests  
19 information pertaining to employees in the bargaining unit such requests are  
20 presumptively relevant. Presumably, if an employer requests information from a  
21 union that involves the bargaining unit working for the employer, such information  
22 would be presumptively relevant.

23 In fact, an employer has the statutory obligation to provide, on request,  
24 relevant information that the Union needs for the proper performance of its duties as  
25 collective bargaining representative. In *NLRB v. Truitt Mfg. Co.*, 351 US 149, 152  
26 (1956); *NLRB v. Acme Industrial Co.*, 385 US 432, 435-36 (1967); *Detroit Edison Co*  
27

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28 <sup>1</sup> It should be noted that the Union provided more than 50 collective bargaining agreements between  
the Union and other employers in the Southern Nevada area.

1 v. *NLRB*, 440 US 301 (1979). The instant matter does not involve presumptively  
2 relevant information because the Employer is requesting information about  
3 employees in bargaining units with other employers.

4 **B. THE UNION ACTED IN GOOD FAITH AT ALL TIMES BECAUSE**  
5 **THE INFORMATION SOUGHT, AS REQUESTED, WAS NOT**  
6 **RELVANT AND WAS OVERLY BROAD AND BURDENSOME**

7 **1. The Instant Request for Information is Not Presumptively Relevant.**

8 When a request concerns data about employees or operations other than those  
9 represented by the Union, or data on financial, sales, and other information, no  
10 presumption exists that the information is necessary or relevant to the Union's  
11 representation of employees. *Duquesne Light Co.*, 306 NLRB 1042, 1043 (1992). In  
12 such an instance, the Union bears the burden to establish the relevance of such  
13 information. *Id.*; *see also Richmond Health Care*, 332 NLRB 1304 (2000);  
14 *Associated Ready Mix Concrete, Inc.*, 318 NLRB 318 (1995), *enfd.* 108 F.3d 1182  
15 (9th Cir. 1997); *Pfizer, Inc.*, 268 NLRB 916 (1984), *enfd.* 736 F.2d 887 (7th Cir.  
16 1985). In a situation, such as the present one, the employer has the burden to show  
17 the relevance of the information requested.

18 To show relevance, the general counsel must present evidence either (1) that  
19 the employer demonstrated relevance of the information, or (2) that the relevance of  
20 the information should have been apparent under the circumstances. *Disneyland*  
21 *Park*, 350 NLRB 1256, 1258 (2007); *see also Allison Co.*, 330 NLRB 1363, 1367 fn.  
22 23 (2000). Absent such a showing, the party receiving the request is not obligated to  
23 provide the requested information that is not relevant. *Disneyland Park*, 350 NLRB  
24 at 1258.

25 A general explanation of why a party needs the requested information does not  
26 suffice to satisfy this obligation. The party requesting information must explain  
27 relevance with some precision. *Id.* at 1258 n.5. Generalized, conclusory  
28 explanations fail to trigger an obligation to supply information. *Id.*; *see also Island*

1 *Creek Coal*, 292 NLRB 480, 490 fn. (1989); *see also Schrock Cabinet Co.*, 339  
2 NLRB 182 fn. 6 (2003).

3 2. **Requests Must Seek Relevant Information And The Employer Has**  
4 **Failed To Meet Its Burden To Show That It Is Entitled To The**  
5 **Requested Information**

6 a. *The Union sought clarification of the Employer's vague and*  
7 *ambiguous request.*

8 The NLRB and courts grant the scope or subject of a request for information  
9 substantial leeway. Accordingly, a party must not ignore an ambiguous request  
10 received from a union. In *Azabu USA (Kona) Co.*, 298 NLRB 702 (1990), the Board  
11 noted that an employer should not ignore or refuse to respond to a request simply  
12 because it is ambiguous. *Beth Abraham Health Services*, 332 NLRB No. 113 (2000).  
13 Instead, the employer should request clarification from the Union or produce the  
14 information to the extent possible. Here, the Union sought clarification on numerous  
15 occasions regarding the asserted "similar language." The Union provided other  
16 contract to the Employer and the Employer failed to point to any specific language in  
17 any contract for which the requested grievances and arbitrations interpreted.

18 b. *The Employer has no showing of the relevance or necessity of the*  
19 *requested information.*

20 The Supreme Court has described the relevance standard of information  
21 requested by a union as a liberal, "discovery-type" standard. *NLRB v. Acme Indus.*  
22 *Co.*, 385 U.S. 432, 437 (1967). *See also Pfizer, Inc.*, 268 NLRB 916, 918, 115 LRRM  
23 1105 (1984), *enf'd. sub nom. NLRB v. Electrical Workers (IBEW) Local 309*, 763  
24 F.2d 887 (8th Cir. 1985) (applying the same "liberal, discovery type" standard of  
25 relevance when a union requests information concerning matters outside the  
26 bargaining unit); *SBC Midwest*, 346 NLRB No. 8, 178 LRRM 1441 (2005). As such,  
27 "the threshold for relevance is low." *Country Ford Trucks, Inc. v. NLRB*, 229 F.3d  
28 1184, 1191 (D.C. Cir. 2000). Moreover, "[i]nformation related to the wages, benefits,

1 hours, [and] working conditions" of unit employees is presumptively relevant. *Id.*

2 Despite the low relevancy standard defined in *Acme*, the information demanded  
3 must at least be relevant to the relationship between the Employer and the Union in its  
4 capacity as representative of the employees. *Transport of New Jersey*, 233 NLRB 694,  
5 97 LRRM 1204 (1977).

6 This duty to provide information includes information relevant to contract  
7 administration and negotiations *between a union and the employer*. *Schrock Cabinet*  
8 *Co.*, 339 NLRB 182, 172 LRRM 1347 (2003) (information needed for the purpose of  
9 assessing grievances); *Barnard Engineering Co.*, 282 NLRB 617, 619, 124 LRRM  
10 1107 (1987). Additional information beyond the scope of negotiations must also be  
11 furnished if it is shown that it is relevant to bargainable issues. *See Local 13, Detroit*  
12 *Newspaper Printing & Graphic Communications Union v. NLRB*, 598 F.2d 267, 271  
13 n. 5 (D.C. Cir. 1979) (finding that the employer's request for data concerning the  
14 availability of straight-time workers was relevant to bargaining).

15 Merely asserting that the information is "necessary" to represent the employees  
16 intelligently, is insufficient to establish relevance. *Soule Glass & Glazing Co. v.*  
17 *NLRB*, 652 F.2d 1055, 1099 (1st Cir. 1981). Likewise, when a party has a vague or  
18 speculative explanation for its request of information, the NLRB has determined that  
19 information requested need not be furnished. *Rice Growers Ass'n of Cal.*, 312 NLRB  
20 837, 144 LRRM 1178 (1993) (denying the Union's request for a copy of the  
21 employer's sales and distribution contract with its parent corporation). A party's  
22 explanation of relevance must be made with some precision as a generalized,  
23 conclusory allegation is insufficient. *Disneyland Park*, 350 NLRB No. 88 (Sep. 13,  
24 2007).

25 When the information requested concerns matters outside the bargaining unit,  
26 however, the burden is on the requesting party to demonstrate relevance. *See*  
27 *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 258, 147 LRRM 1179 (1994). A  
28 party can satisfy this burden by demonstrating a reasonable belief supported by

1 objective evidence for requesting the information. *Knappton Maritime Corp.*, 292  
2 NLRB 236, 238-239, 130 LRRM 1119 (1988). The Employer must therefore make a  
3 showing of relevancy to receive the information it desires. The Union does not  
4 establish relevancy, however, merely by claiming that the data would be “helpful” in  
5 performing its tasks. *Teleprompter Corp. v. NLRB*, 570 F.2d 4, 8 (1st Cir.1977).

6 The evidence shows that the employer's attorney made a request for certain  
7 information. The testimony makes it clear that the actual proposals in the collective  
8 bargaining agreement were not difficult to understand and that there actually were no  
9 questions as to the meaning of certain provisions. However, the employer's attorneys  
10 in bad faith requested certain information based on their dealings with other  
11 companies represented by the Union. At no time, did the employer make any  
12 indication that it did not understand the proposals being made by the Union. In fact,  
13 the employer did not have an agent testify as to the employer's understanding and the  
14 employer's need for the information that was requested by its attorneys.

15 The Union acted in good faith at all times. After the initial request for  
16 information, the Union sent every contract that was requested of it. The Union  
17 testified that its hope was that once the employer's attorney had those contracts, it  
18 could identify which language it was specifically asking about. However, the  
19 employer's attorneys never did identify what language it considered to be "similar  
20 language" used in other collective bargaining agreements. It was well within the  
21 employer's power to go through the contracts it asserted had similar language and  
22 point out which actual provisions it would like to see grievances and arbitrations  
23 about. However, the employer never did that. It simply reiterated its request over and  
24 over again and requested the Union to comply until it finally filed this instant unfair  
25 labor charge.

26 Again, the employer has shown no evidence that it did not understand certain  
27 proposals or provisions of the first contract being negotiated. As such, any of the  
28 requested grievances or arbitrations are inherently not relevant to the matter at hand

1 since there was no issue in interpreting the contract language as proposed. What the  
2 employer's attorneys engaged in what a speculative "fishing expedition" in order to  
3 require the Union to comply with its unreasonable information demands.

4 The employer's attorney testified that it narrowed the scope when it in fact  
5 never did. The employer's attorney stated that it narrowed the geographical location.  
6 However, as received in evidence, was testimony that there are numerous companies  
7 in which the Union represents employees that have no dealings whatsoever with  
8 casino work. Again, the workplace in a non-casino area would make such requests  
9 not relevant. Moreover, the employer's attorneys never identified "similar language"  
10 in which the Union could narrow its search for appropriate arbitration and grievances.

11 What is abundantly clear is that the information request is not presumptively  
12 relevant to the matter at hand. Especially considering that the employer did not testify  
13 that it did not understand the actual language being proposed in the contracts. As such  
14 the employer must show why the information is relevant and why it is necessary. The  
15 employer has done neither.

16 As such, the Union requests that the ruling be in the Union's favor, that the  
17 ALJ find that the Union did not violate Section 8(b)(3) of the Act.

18 **3. The Union Acted in Good Faith When It Did Not Allow the**  
19 **Employer's Attorneys to Search the Union's Files That Contain**  
20 **Confidential Information.**

21 A party may refuse to furnish confidential information to the other party in a  
22 collective bargaining relationship under certain conditions. Initially, the party for  
23 whom the information was requested must show that it has a legitimate and  
24 substantial confidentiality interest in the information sought. *Pennsylvania Power*  
25 *Co.*, 301 NLRB 1104, 1105 (1991). In this regard, the Board has held that "the party  
26 asserting confidentiality has the burden of proof. Legitimate and substantial  
27 confidentiality claims will be upheld, but blanket claims of confidentiality will not."  
28 *Id.* (Citations omitted).

- 1 A claim of confidentiality as a defense is limited to:
- 2 (1) highly personal information, with promises or reasonable expectation of
- 3 confidentiality (e.g., individual medical or psychological test results);
- 4 (2) substantial proprietary information (e.g., trade secrets);
- 5 (3) reasonable expectation that disclosure will lead to harassment or retaliation
- 6 (e.g., identity of witnesses); or
- 7 (4) traditionally privileged information (e.g., material prepared for pending
- 8 lawsuit.

9 *Detroit Newspaper Agency*, 317 NLRB 1071, 149 LRRM 1241 (1995).

10 If this showing is made, the Board must weigh the party's interest in

11 confidentiality against the requester's need for the information, and the balance must

12 favor the party asserting confidentiality. *In. Indiana Pub. Serv. Co.*, 347 NLRB 210,

13 211 (2006) (Citations omitted). Finally, even if these conditions are met, the party

14 may not simply refuse to provide the requested information, but must seek an

15 accommodation that would allow the requester to obtain the information it needs

16 while protecting the party's interest in confidentiality. *Id.*

17 In the instant matter, the Union has not asserted that it cannot provide the

18 requested information because of confidentiality reasons. The Union merely asserts

19 that it acted in good faith by denying Mr. Kamer's law firm from having access to the

20 Union's files because they contain confidential information that was not subject to

21 any request for information.

22 Therefore, the issue of confidentiality is not present in the instant matter.

23 However, the determination of whether it was reasonable for the Union to deny

24 Mr. Kamer's law firm's proposed solution was very reasonable given the inclusion of

25 confidential information in those files.

26 During the trial, the General Counsel brought up the issue of whether the

27 Union offered to redact confidential information. Such an assertion would be a red

28 herring. The Union has asserted that it could not provide the information as requested

1 because it was burdensome without any reasonable limitations being placed. The  
2 Employer’s attorney proposed a “solution” in which they themselves would look  
3 through the files to determine if certain information was responsive. However, the  
4 General Counsel’s suggestion would require the Union to go through all of its files,  
5 redact any confidential information, and then allow the Employer’s attorney to  
6 review the files. This “solution” would be even more onerous than giving an  
7 opposing party unfettered access to its file room.

8           Again, the Union has not asserted that the requested information was  
9 confidential. Merely that the files contain unrequested information that is confidential  
10 and that is why the Union could not allow the Employer or its attorneys to have  
11 access to said files.

12           **4. The Employer Made the Request in Bad Faith.**

13           If a party can show that the information request is made in bad faith, then there  
14 is no obligation to supply the requested information. *Compare NLRB v. Wachter*  
15 *Construction*, 23 F.3d 1378 (8th Cir. 1994), *rev’g* 311 NLRB 215, 143 LRRM 1181  
16 (1993) (union requests for subcontracting information were made in bad faith to  
17 harass the employer into contracting only with unionized contractors) *with Island*  
18 *Creek Coal Co.*, 292 NLRB 480, 489, 130 LRRM 1292, 1300 (1989) (noting “good  
19 faith requirement is met if at least one reason for the demand can be justified.”), *enf’d*  
20 *mem.*, 889 F.2d 1222 (6th Cir. 1990) *and Gruma Corp. d/b/a Mission Foods*, 345  
21 NLRB no. 49, 178 LRRM 1504 (2005) (mere assertion of harassment).

22           Here, there was evidence that the Employer’s attorneys have a database of  
23 arbitration agreements with which it derives income. Moreover, there was evidence  
24 that despite the Union requesting additional information as to what was being  
25 requested, the Employer refused to do anything to explain what “similar language” it  
26 was looking for, despite the Union providing more than 50 collective bargaining  
27 agreements between it and other employers.

28 ///



1 **PROOF OF SERVICE**

2 I am employed in the office of a member of the bar of this Court at whose direction this  
3 service was made. I am over the age of 18 and not a party to the within action; my business  
4 address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

5 On March 13, 2017, I served the foregoing document described as **POST HEARING**  
6 **BRIEF** by serving interested parties in this action by placing a true copy thereof in a sealed  
7 envelope, addressed as follows:

8 Stephen Kopstein, Esq.  
9 **National Labor Relations Board, Region 28**  
10 Foley Federal Building  
11 300 Law Vegas Boulevard South, Suite 2901  
12 Las Vegas, NV 89101

13 Kaitlin H. Ziegler, Esq.  
14 Kamer Zucker Abbott  
15 3000 West Charleston Boulevard, Suite 3  
16 Las Vegas, NV 89102

17 I am “readily familiar” with the firm’s practice of services of process. Under that  
18 practice, this document would be deposited:

19  X  **(BY MAIL)**: with U.S. postal service on that same day with postage thereon fully  
20 prepaid in the ordinary course of business.

21 I declare under the penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct.

23 Executed on March 13, 2017 at Rancho Cucamonga, California.

24   
25 \_\_\_\_\_  
26 Justin M. Crane, Esq.