

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28

IGT d/b/a INTERNATIONAL  
GAME TECHNOLOGY

Respondent

and

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
UNION 501, AFL-CIO

Charging Party

CASE NOS. 28-CA-192062  
28-CA-193733  
28-CA-199724  
28-CA-200434

**IGT’s REPLY IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS THE CLAIM  
RAISED IN PARAGRAPH 6(i) OR IN THE ALTERNATIVE  
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Section 102.24(c) of the Rules and Regulations of the National Labor Relations Board, Respondent IGT d/b/a International Game Technology (“IGT”) files this Reply in support of its motion to dismiss or in the alternative for summary judgment against the claim raised in paragraphs 6(f), 6(i), and 8 in the August 11, 2017 Second Consolidated Complaint (the “Complaint”), which allege that IGT violated the Act by failing to provide the Union information about non-unit employees.

IGT’s Motion must be granted because it is undisputed that IGT provided some of the requested information to the Union and that the Union never explained how the information that was withheld was relevant. Indeed, General Counsel: (1) concedes that IGT provided the Union with some of the requested information (Opp’n at 7); (2) ignores Board precedent which requires the Union to explain the relevance of the requests to IGT, before IGT was required to produce

the information (*Id.* at 5-7); and (3) misconstrued *Loral Electronic Systems*, 253 NLRB 851 (1980) as precedent requiring the disclosure of non-unit employee information. The General Counsel's Opposition fails to cite to any statement by the Union explaining the relevance of the requested information or to any precedent that relieved the Union of its burden to explain the relevance of the information it requested. *Id.* Indeed, *Loral* does not require IGT to provide the Union with non-bargaining unit information without the Union first demonstrating the information's relevance. Therefore, the remaining claims must be dismissed.

## **I. ARGUMENT**

### **A. It is undisputed that IGT provided the union with a portion of the requested information.**

General Counsel concedes in the Opposition that "it is accurate that Respondent provided *some* information to the Union." Opp'n, 7. It is undisputed that the only requested information IGT did not provide to the Union was the specific names of the out of state employees. IGT provided the Union with: (1) the states where the employees reside; (2) the locations the employees were sent to; (3) the employees' qualifications; (4) a list of equipment employees worked on; and (5) the current pay scales for all IGT employees. *See Ex. 2* and IGT, 2016 WL 677329, p.2 (Nov. 15, 2016 NLRB Div. of Judges) (finding IGT satisfied its obligation to provide the Union with requested wage scale information for all IGT employees). Accordingly, because it is undisputed that certain information was in fact provided to the Union, the claims that IGT did not provide that information should be dismissed.

### **B. It is undisputed that the Union failed to explain to IGT how the requested information was relevant.**

General Counsel failed to respond to IGT's argument that the Union never explained how the requested information was relevant. The Board precedent regarding the Union's burden to explain to IGT the relevance of requested non-bargaining information to IGT is clear. IGT is

only obliged to provide the Union, upon request, **relevant** information that the Union needs to perform its duties as the bargaining representative of the bargaining unit. *Disneyland Park*, 350 NLRB 1256, 1257 (2010) (citations omitted). Information about IGT's employees who are not part of the bargaining unit is not presumptively relevant. *E.I. Du Pont de Nemours & Co.*, 264 NLRB 48, 51 (1982) (citations omitted). Indeed, General Counsel concedes that the information the Union requested from IGT was about non-bargaining unit employees. Because the Union requested information from IGT that was not presumptively relevant the Union has the burden to demonstrate to IGT the relevance of the information. *Disneyland Parks*, 350 NLRB at 157. In fact, it must also be shown that **at the time the Union made the request**, the Union "had a reasonable basis for believing that the information would be necessary to it in carrying out its statutory obligations." *Allison Corp.*, 330 NLRB 1363, 1367 (2000). It follows that if the Union believed the non-bargaining unit information was relevant at the time the Union requested information, then the Union should have been able to clearly communicate the reason it believed the information was relevant to IGT when the request was made. IGT should not be penalized because the Union chose to conceal or refused to communicate its basis for believing the requested information was relevant.

It remains undisputed that IGT asked the Union to explain the relevance of the requested information. Nevertheless, despite several email exchanges between IGT and the Union about the request for information (*see Exs. 1-8*), General Counsel failed to cite any comment from the Union stating, "The requested information is relevant because..." That is because the Union never made such a statement. The Union **never said**: (1) the requested information is relevant to aid the Union in its contract negotiations; or (2) the requested information is relevant because the Union may wish to match wages of the unit employees to the wages of the out of town

employees. Instead these are assumptions made by General Counsel in the Opposition. As General Counsel noted in the Opposition, IGT has a bargaining relationship with the Union and not with General Counsel. Opp'n at 10. Accordingly, the Union's response to IGT's request to explain the relevance of the requested information is controlling, and not the conjecture, speculation, and opinions of the General Counsel raised in the Opposition.

The Union's burden to explain to IGT the relevance of the circumstances cannot be relieved without the Union giving IGT an appropriate response that demonstrates relevance. If relevance was obvious, then the burden on the Union was light, because all it would have had to do was communicate the obvious reason to IGT. Regardless, IGT is not required to produce non-presumptively relevant information until the Union has explained its relevance. Board precedent does not require IGT to read the Union's mind to determine if information is relevant. Instead, it requires the Union to communicate the relevance to IGT. Despite IGT's request and the open dialogue between the parties, the Union never explained to IGT how the limited non-bargaining unit information that IGT did not provide was relevant. Accordingly, this claim must be dismissed.

**C. *Loral* does not require IGT to provide the Union with non-bargaining unit information before the Union explains the relevance of the information.**

General Counsel mischaracterized *Loral* as requiring the disclosure of non-bargaining unit employee information to a union when it is alleged that those non-bargaining unit employees are performing unit employee work. Opp'n at 6. This is not *Loral*'s holding.

In *Loral*, the union and the employer had a written agreement that: (1) no non-bargaining unit employee at the employer's Yonker's facility would perform any work "normally be assigned to unit employees" including "research work performed by engineers and technicians"; (2) if any such work was performed at the Yonker's facility that it would be covered by the

parties' CBA; and (3) the Union had the right to visit the Yonker's facility to determine whether such work was being performed in violation of the parties agreement. *Id.* at 851-52. The union alleged that the employer breached their agreement by assigning research work at the Yonker's facility to employees outside of the unit. *Id.* at 852. The union filed a grievance with the employer over the alleged breach and on the same date requested information from the employer about the non-unit employees to help the union determine whether the parties' agreement had been breached and whether the grievance and arbitration should be pursued. *Id.* at 853.

Relying upon the Board precedent that "a union is entitled to information requested which bears upon the union's determination to file a grievance or is helpful in evaluating the propriety of going to arbitration" the Board found that:

such information is obviously necessary for the Union to evaluate the propriety of proceeding with the arbitration. Moreover, should the Union decide to proceed to arbitration such information would be relevant in such arbitration proceeding in support of the Union's position.

*Id.* at 854. Accordingly, *Loral* stands for the position that non-bargaining unit employee information must be disclosed when it: (1) will assist the union in determining whether the employer breached its written agreement with the union not to preserve work for the bargaining unit; (2) was requested in conjunction with notice to the employer of a grievance that the employer breached the parties' written agreement; and (3) is necessary to assist the union to determine whether to pursue the grievance/arbitration.

In this case there is no written agreement prohibiting IGT from using out of town employees to perform bargaining unit work. In fact, the opposite is true. IGT has always used out of town employees to assist with bargaining unit work on an as needed basis. *See e.g. Ex. 4*, p. 3, June 14, 2016 email from the Union to IGT confirming IGT's use of out of town employees to perform bargaining unit work. Moreover, IGT and the Union have a written agreement that

allows IGT to use out of town employees to temporarily assist the bargaining unit. *See Ex. 9*, Aug 31, 2016 Agreement. Specifically, the Agreement allows IGT to use any of its employees to fill a temporary labor need without having to bargain with the Union. *Id.* In this regard, the work out of town employees are performing is not “bargaining unit work” because the Agreement allows non-unit employees to perform it.

Accordingly, *Loral* is inapplicable to the facts of this case. There is no allegation that IGT wrongfully used non-unit employees to perform unit work. Indeed, IGT has a recognized past practice of using non-unit employees to temporarily assist the unit and the parties have an express agreement allowing such conduct. Moreover, there is no allegation that IGT breached the August 31, 2017 Agreement by using out non-unit employees. Simply put, the non-bargaining unit information requested by the Union is not relevant, and the ruling in *Loral* does not make the information relevant or relieve the Union of its burden to demonstrate the information’s relevance. As such, the Motion should be granted and the claim should be dismissed.

## **II. CONCLUSION**

Based on the foregoing, Respondent respectfully requests that its Motion be granted and the claim that IGT violated the Act by failing to provide the Union information be dismissed.

DATED this 12th day of September, 2017.

/s/ Matthew Cecil  
Theo E.M. Gould, Esq.  
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Littler Mendelson, P.C.

Counsel for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 12th day of September, 2017 caused copies of the foregoing document entitled **IGT’s REPLY IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS THE CLAIM RAISED IN PARAGRAPH 6(i) OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT** to be delivered to the following:

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