

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

AT&T SERVICES, INC.

and

Case 13-CA-185708

**COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, CLC, DISTRICT 4**

COUNSEL FOR GENERAL COUNSEL'S BRIEF TO THE BOARD

Respondent AT&T Services, Inc., (“Respondent”) has refused to provide the Communications Workers of America AFL-CIO, CLC, District 4 (“Union”) with relevant information that is necessary for the proper performance of its duties as the exclusive collective-bargaining representative of Respondent’s unit employees¹ in violation of Section 8(a)(5) of the National Labor Relations Act (“the Act”). Specifically, Respondent has continuously refused to furnish the Union with “the names, work location, current title and Net Credited Service (NCS), quarterly reports of test results and test dates for all employees taking the test for the periods of 1/1/2014 through implementation of the TMT III (TMTF II Results) and 10/1/2015 through [the present]”. (Jt. Exh. 31).

It is uncontested that the TMT III test itself impacts bargaining unit employees by protecting them from layoffs. The Union requested this information to evaluate whether to file a grievance in response to Respondent’s implementation of this testing requirement for bargaining unit employees and the Union’s concerns that a high proportion of bargaining unit members were failing the new test. Respondent refused to furnish this information, maintaining that this information was confidential. However, as the record demonstrates and will be fully discussed

¹ Comprised of all full-time and regular part-time Service Technicians, Inventory Specialists, Network Technicians, Construction Technicians, and any other position covered by the Collective Bargaining Agreement between AT&T Midwest and Communications Workers of America District 4 effective April 12, 2015, through April 14, 2018. (Jt. Exh. 2 and 5; Jt. Mt. p. 2)

herein, Respondent's claims of confidentiality are baseless. Accordingly, Respondent's continued refusal to provide this information to the Union is a blatant violation of Section 8(a)(5) of the Act.

I. FACTS AND ANALYSIS

Respondent and the Union are parties to a collective-bargaining agreement effective April 12, 2015, through April 14, 2018. (Jt. Ex. 5; Jt. Mot., p.1-2). About 1995, Respondent and the Union negotiated a Memorandum of Agreement called the Employee Security Commitment ("ESC"). (Jt. Exh. 5, see p. 141 and MOA A19). The ESC provides layoff protection for employees who pass certain tests. The employees were protected inasmuch as if a layoff was imminent and an employee passed the test, the Respondent was required to offer them a different job. The Respondent previously administered a proctored test called the TMT (Technical Mechanical Test) II. If employees passed the test, they would be eligible for the protections of the ESC.

Sometime in 2015, Respondent informed Communications Workers of America ("CWA") District 4 Representative, Ron Honse that it was implementing the TMT III test. The TMT III was un-proctored and could be taken at home. (Jt. Exhs. 8 and 9). The Union became aware that fewer employees were passing the TMT III as compared with the TMT II which raised concerns for the Union because fewer employees would be protected from layoff.

Starting about July 30, 2015, the Union, through CWA Representative Ron Honse, filed several information requests asking for data showing the percentage of those taking and passing the TMT III test at issue. (Jt. Exhs. 13 and 31). On August 19, 2015, Director of Labor Relations Stephen Hansen responded that he would provide the requested test results but only for a period of four quarters following implementation of the new test.

Since that time, the Union continued to receive reports from Unit members and stewards that greater numbers of employees were failing the TMT III test. Accordingly the Union decided to investigate a potential grievance concerning the test and determine who should be named as a grievant. (Jt. Mt. paragraph 33). Therefore on April 8, 2016, the Union, through Honse, refined the request and requested that in addition to the quarterly pass/fail rates that Respondent had previously provided, Hansen provide the Union with the names, titles, and work locations of all employees that took the test in the quarterly report. (Jt. Exhs. 19, 20, and 21).

While, as will be discussed, Respondent never challenged the relevancy of the information requested but rather, objected to furnishing the information on the grounds that the information was purportedly “confidential,” (Jt. Exh. 20) the relevance and Union’s need for this information is clear: the Union needs this information to determine whether this new testing procedure was unfair to its members and evaluate the propriety of filing a grievance.

Specifically, as noted, the parties’ ESC Agreement provides layoff protection for employees who pass the TMT III test. If layoff is imminent and an employee previously had passed the test, the Respondent was required to offer them a different job rather than place them on layoff status. In its request, the Union requested the names of the test takers in order to verify the Respondent’s own errors in reporting passage rates. This information is critical for the Union in its role as exclusive bargaining representative of the Unit to ensure that the new testing procedure was fair and enable the Union to evaluate any potential negative impact upon the Unit which might require the filing of a grievance.

Honse met with Hansen on May 5, 2016, and yet again renewed the Union’s request for information regarding the testing for TMT III. During this meeting Hansen admitted the information provided by Respondent up to this point was incorrect and the data did not

accurately reflect what the Union had requested. Hansen told the Union that new data was being gathered and would be provided when complete. (Jt. Exh. 31; Jt. Mt. paragraph 41). Respondent did not provide the names, titles, and work locations of all employees that took the test in the quarterly report as requested.

From June 22 through September 6, 2016, the Union repeatedly made additional information requests about the test and its results. While Respondent provided some limited information in response², Respondent steadfastly and admittedly refused to provide the names, work location, current title and Net Credited Service (NCS), quarterly reports of test results and test dates for all employees taking the test for the period of 1/1/2014 through implementation of the TMT III Test and 10/1/2015 through 12/31/2018. (Jt. Mt., paragraph 47; Jt. Exhs. 25, 26, 27, 31, 32, 33, and 34).

Because continued negotiations with Respondent to provide the Union with the requested information had been unsuccessful, on September 6, 2016, Honse sent an updated information request. In this request Honse recounted the interactions between the Union and Respondent concerning the requested information and reiterated that the Union continued to seek the information that Respondent had not provided, specifically, the names, work location, current title, and Net Credited Service (NCS), quarterly reports of test results and test dates for all employees taking the test for the period of 1/1/2014 through implementation of the TMT III Test and 10/1/2015 through 12/31/2018. The Union requested that the information be provided by September 9, 2016. On September 23, 2016, Hansen responded in writing, refusing to provide the requested information and added that Respondent considered the test information proprietary

² During this time, the Respondent provided the Union with quarterly pass rates. (Jt. Exh. 27) On August 31, 2016, Respondent offered to provide test-takers' names redacted and the Union could select employees for which the Employer would reveal all identifying information, however, Respondent unreasonably limited this request to two employee names per quarter for verification. (Jt. Mt. paragraphs 46 and 49; Jt. Exh. 30)

due to the expense of developing the test and the need to keep the substance of the test from those being tested. (Jt. Exh. 36). Significantly, at no time did the Union request the substance of the test.

Respondent is unjustifiably refusing to provide the Union with relevant information which is limited to information about the test takers and their results. Moreover, Respondent's proprietary concerns and purported need to keep the substance of the test from those being tested is specious given that the test is un-proctored, may be taken in any location with a computer, and thereby readily available for potential dissemination directly by individuals taking the test.³

Respondent admittedly received the Union's request for this information on April 8, and subsequent renewals on April 14, April 20, June 22, July 6, August 17, and September 6, 2016. (Jt. Exhs. 20, 21, 24, 26, 28, 32, 33, and 35). Respondent also admits that the request is presumptively relevant as it pertains to bargaining unit employees.⁴ (Jt. Exh. 20). Respondent's sole reason for withholding the requested information is based on its assertion that the information is confidential. However, the law is clear that the party asserting confidentiality has the burden of proving that it has a legitimate and substantial confidentiality interest in the information sought, and that such interest outweighs its bargaining partner's need for the information. *Washington Gas Light Co.*, 273 NLRB 116 (1984). In this case, Respondent has failed to present any evidence to show a legitimate claim of confidentiality in protecting the

³ Respondent's unsupported concerns that the Union might also use this information for some unarticulated nefarious purpose does not obviate Respondent's obligation to furnish the information for, it is well established that where a union's request for information is for a proper and legitimate purpose, it cannot make any difference that there may also be other reasons for the request or that the data may be put to other uses. See *Associated General Contractors of California* 242 NLRB 891 (1979) citing *Utica Observer-Dispatch, Inc. v. NLRB*, 229 F. 2d 575 (2d Cir. 1956).

⁴The information requested is crucial in determining which bargaining unit employees have been negatively affected. As noted, the ESC provides layoff protection for employees who pass the TMT III test at issue. If layoff is imminent and an employee passed the test, the Respondent was required to offer them a different job. Thus, the union's ability to file grievances on behalf of its members who may be negatively affected by the test and potentially lose the ESC layoff protection is obstructed by the Respondent's refusal to provide this relevant information.

security and integrity of the test it created. (Jt. Exh. 36). Moreover, Respondent presented no evidence that the test takers were given assurances of privacy, that the test takers themselves requested that their information remain private or that their test results would remain confidential which might otherwise justify Respondent's refusal. See, e.g., *Detroit Edison v. NLRB*, 440 U.S. 301, 314 (1979); *U.S. Postal Service* 359 NLRB No. 115 (2013); *Illinois-American Water Co.*, 296 NLRB 715 (1989), *enfd.* 933 F.2d 1368 (7th Cir.1991). Respondent's unsupported, bald assertion of confidentiality must therefore fail.

Based upon the foregoing Counsel for the General Counsel submits that the record clearly and unequivocally demonstrates that Respondent has violated Section 8(a)(5) of the Act by refusing to provide the Union with information it requested that is necessary and relevant for the execution of the Union's duties as exclusive bargaining representative of the Unit. Counsel for the General Counsel respectfully requests that an order be issued consistent with Board law, and as requested in the Complaint and Notice of Hearing that issued on February 22, 2017.

Dated at Chicago, Illinois this 26th day of September 2017.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certified that copies of the **Counsel for the General Counsel's Brief to the National Labor Relations Board** has been electronically filed with the Executive Secretary and served upon the following parties via electronic mail this 26th day of September, 2017.

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