

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

RESPONDENT'S MOTION TO STRIKE DOCUMENTS

Respondent files this Motion to Strike Documents which are not in conformity with your Honor's order on the record and pursuant to the November 21, 2017 Order reopening the record.

I. THE ORDER ON THE RECORD

On the final day of the hearing, "Counsel for the General Counsel ("CGC") stated that she had not received certain documents responsive to Items 20 and 25 of Board subpoena duces tecum B-1-YBZSYJ." Nov. 21, 2017 Order. Your Honor "granted CGC's unopposed request to adjourn the hearing for a period of time sufficient for Respondent to provide the documents." *Id.* Specifically, Your Honor ordered that "Respondent produce [additional] documents responsive to Items 20 and 25 by November 2, 2017 (as temporally narrowed by the ruling on Respondent's

petition to revoke), and granted Counsel for the General Counsel until November 9, 2017¹, to enter such documents into the record.” *Id.* Respondent promptly complied with Your Honor’s order and timely produced the documents bates numbered IGT03831-11351 in response to items 20 and 25 of Board subpoena duces tecum B-1-YBZSYJ.² CGC raised no objection to the timeliness or sufficiency of Respondent’s supplemental subpoena responses.

Your Honor also kept the hearing record open for a second limited purpose. Specifically, Your Honor explained as follows:

JUDGE ANZALONE: I'm going to allow you to put in anything with a Bates number on it that has been subpoenaed that you can show me was required to be interpreted with the log. So you're just going to have to show me that there's a copy that doesn't have the employee's name on it but it just has the operative number. I forget what we're calling the number.

MR. GOULD: Work center number.

MS. OVIEDO: The key.

JUDGE ANZALONE: The key, the key that the thing will relate to.

MS. OVIEDO: Or legend or whatever.

JUDGE ANZALONE: Okay. That's fine. That's fine. That's fine.

MS. OVIEDO: Okay.

Tr. 518.

Accordingly, CGC is also allowed to submit documents which did not include

¹ CGC’s request for additional time to submit documents was granted until November 24, 2017. *Id.*

² Additionally, on the final day of the hearing and before the record closed, Respondent produced two Excel Spreadsheets to CGC with 13 columns, the first of which was titled Base Start Date. CGC admitted the first 2 pages of these spreadsheets as GCX 23(a) and (b). These documents were sorted in a manner that listed the rows without names assigned to them first. Tr. 511. CGC did not submit these records to Your Honor.

Respondent's employees' names and which require the key Respondent produced to interpret them.

Respondent was given until November 29, 2017 to object to any supplemental documents introduced by the CGC which are outside of the scope of Your Honor's Order. Nov. 21, 2017 Order.

II. RESPONDENT'S POSITION

Respondent moves to strike the CGC's introduction of IGT00037-614, 01890-1898 and 3821-3834 which do not comply with Your Honor's Order because they were not produced as a supplement to subpoena requests 20 or 25 and do not require interpretation Respondent's work center number/employee name "key".

A. Documents Bates-Stamped IGT00037-614 should be stricken

Documents marked as IGT00037-614 were not part of the supplemental production by Respondent in response to subpoena request 20 or 25, and do not require the key to interpret, and therefore should be stricken. IGT00037-614 were produced to CGC by Respondent during the course of the hearing itself, and are not reports that identify employees by work center number and thus the key is not required to interpret them. Instead, these documents are reports about AppleOne employees. Moreover, the documents include the names of the AppleOne employees and IGT employee who supervised them. For example, page IGT0298 lists Jon Anderson as the supervisor for temporary AppleOne employees Jack Durka, Robert Oja, Ernest Soto, Lesley Zita, Paul Coleman, Jose Estrada, Issaiah Arroyo, and Noel Caldejon for the week ending January 14, 2017. Similarly, the same AppleOne employees identified above are also identified for January 2017 on pages IGT0611-612. There are no work center numbers that require the key to interpret.

The CGC's supplemental submission of documents IGT00037-614 clearly falls outside of Your Honor Order. The CGC was in possession of IGT00037-614 at the hearing but decided not

to introduce them at that time. The work center number/employee name “key” Respondent timely provided in its supplemental production was not needed to interpret these documents. Further, by waiting until this late date to submit them into the record, Respondent is prejudiced as it is deprived of an opportunity to introduce witnesses to examine the information contained in the documents. Accordingly, the CGC’s supplemental submission of IGT00037-614 into the record should be stricken.

B. Documents Bates-Stamped IGT01890-1898 and 3821-3834 should be stricken

Supplemental documents marked as IGT01890-1898 and 3821-3834³ should also be stricken. These documents are schedules that were provided to CGC via email on October 18, 2017, and the CGC confirmed before Anthony Silva testified that she had received IGT01890-1898. Moreover, Silva testified that he reviewed IGT01890-1898 in preparation for his testimony. Tr. 207. Nevertheless, CGC chose not to introduce these schedules during the hearing.

The CGC’s supplemental submission of IGT01890-1898 and 3821-3834 clearly falls outside of Your Honor’s Order. Certainly, re-bates numbering the records for clarity does not cause this schedule to fall under the coverage of Your Honor’s limited order. The CGC was in possession of these schedules at the hearing but decided not to introduce them at that time. Moreover, the “key” was not needed to interpret these documents. Further, by waiting until this late date to submit them into the record, Respondent is prejudiced as it is deprived of an opportunity to introduce witnesses to examine the information contained in the documents. Accordingly, the CGC’s supplemental submission of IGT01890-1898 and 3821-3834 into the

³ The schedules identified as IGT01890-1898 are the same documents as IGT03821-3834. IGT inadvertently assigned bates numbers IGT1890-1898 to its supplemental production. The undersigned explained the oversight to CGC and reproduced them in its supplemental disclosures with the original bates stamp crossed out and the new bates stamp numbers, IGT03812-3830.

record should be stricken.

III. CONCLUSION

Your Honor did not reopen the record to allow the CGC to introduce any record that she forgot to examine during the hearing. It was for two very specific purposes. Either the documents were subsequently produced by Respondent in response to subpoena requests 20 or 25, or a supplemental “key” was needed to interpret these documents. The CGC’s supplemental introduction of IGT00037-614, 01890-1898 and 3821-3834 do not satisfy either criteria. CGC could have introduced them during the hearing, but chose not to do so. Their subsequent introduction of these documents by the CGC is outside of the scope of Your Honor’s order and prejudicial to Respondent. Accordingly, CGC’s submittal introduction of IGT00037-614, 01890-1898 and 3821-3834 should be stricken from the record.

Respectfully submitted.

DATED this 29th day of November, 2017.

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

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of November, 2017 caused copies of the foregoing Reply in Support of **RESPONDENT’S MOTION TO STRIKE DOCUMENTS** to be delivered to the following:

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