

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4**

**HAYWARD LABORATORIES, INC.**

**and**

**Case 04-CA-213560**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 773**

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S MOTION FOR  
SUMMARY JUDGEMENT**

Pursuant to Rule 102.24(b) of the Board's Rules and Regulations, Series 8, as amended, the General Counsel files this opposition to Respondent Hayward Laboratories, Inc.'s Motion for Summary Judgment (“Motion”) which it filed on August 21, 2018.<sup>1</sup> The Complaint alleges that Respondent violated Section 8(a)(5) of the Act by failing and refusing to furnish the International Brotherhood of Teamsters Local 773 (“the Union”) with information it requested on June 15, June 27, July 24, and August 29, 2017, respectively, that is necessary for and relevant to the Union’s performance of its duties as the exclusive collective-bargaining representative of the alleged bargaining unit. The information sought in all of these requests is necessary because it pertains to Respondent’s production goals for each of its products and to the standard line speeds which are required for bargaining unit employees to meet those goals. The hearing in the instant matter is scheduled to begin on September 20, 2018, at which time the General Counsel intends

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<sup>1</sup> The Charging Party, International Brotherhood of Teamsters Local 773, also filed an opposition to Respondent’s Motion on August 23, 2018.

to present testimony and documentary evidence to support the violations alleged in the Complaint.

## **I. BACKGROUND**

Respondent manufactures beauty care products from its facility in East Stroudsburg, Pennsylvania. The Union has represented a unit of production employees at this facility for the purposes of collective bargaining for at least the last 25 years. The most recent collective-bargaining agreement between Respondent and the Union is effective from January 1, 2017 through December 31, 2024.

## **II. ARGUMENT**

In its Brief in Support of Respondent's Motion for Summary Judgment ("Brief"), Respondent correctly states that the Board's standard for granting such motions is to only grant such motions when the following two conditions have both been satisfied: 1) there is no genuine issue of material fact; and 2) the moving party is entitled to judgment as a matter of law. Manifestly, neither of these conditions has been met here.

As a preliminary matter, Respondent submits that there is no genuine issue of material fact herein. However, in support of this baseless claim, it improperly introduces its own facts which are not yet in evidence to support its Motion and claims. Legal facts in Board proceedings are traditionally established in one of two ways: (1) they are alleged and admitted in a Complaint and Answer, or (2) they are admitted into evidence at hearing. At this stage, there has been no hearing, so it must follow that any facts and any genuine issues of fact (if any) can only be found in the Complaint and the Answer. Respondent, however, ignores the numerous issues of material fact already amply established by the Complaint and Answer.

As is clear from the pleadings in this case, there are several genuine issues of material fact for which testimony and evidence must be taken at trial. First, there appears to be an issue over which classifications of employees comprise the bargaining unit. The General Counsel has alleged in paragraph 5(a) of the Complaint that the unit consists of:

All full-time and regular part-time production employees, excluding all other employees, professional employees, managerial employees, confidential employees, employees in the mechanic, maintenance, distribution and batcher classifications, guards, and supervisors as defined by the act.

Inexplicably, Respondent denies this allegation of the Complaint while admitting that has an eight-year collective-bargaining agreement with the Union and that it is the Section 9(a) representative of the bargaining unit employees. Since any remedial Notice must necessarily include a description of the bargaining unit, unless Respondent amends its answer to admit paragraph 5(a), evidence must be taken at trial on this issue so that the Administrative Law Judge can determine the correct description of the unit.

Second, the General Counsel alleges in paragraph 6(c) of the Complaint that on July 24, the Union verbally requested that Respondent furnish it with “breakdown sheets” for all of its products similar to the breakdown sheet it provided to the Union the same day for “8.5 oz. C/B Body Oil.” Respondent denies that the Union made such a request. Therefore, evidence must be taken at trial with respect to this genuine issue of material fact so that the Administrative Law Judge can decide whom to credit on this issue.

Third, paragraph 6(a) through (d) of the Complaint also alleges that since June 15, June 27, and August 29, 2017, respectively, Respondent has failed and refused to furnish the Union

with information it requested in writing. While Respondent admits “the existence” of these requests, it denies that it failed and/or refused to provide the Union with the information requested. As argued above, in light of Respondent’s Answer, a genuine issue exists as to whether it failed and refused to provide this information, and a hearing is necessary to adduce evidence on this issue, to determine whether or not the Employer provided the requested information, and if it did not do so (as General Counsel contends), whether such failure was lawful.

Fourth, Respondent’s affirmative “Separate Defenses” as set forth in its Answer further establish that there are genuine issues of material fact that will require a hearing to resolve. Respondent states that “[t]he purported relevance of the requested information was not and should not have been apparent to Hayward under the circumstances.” This defense clearly requires that evidence be adduced to establish what those “circumstances” were. The central legal question raised by this case -- whether the line speed is a term or condition of employment for the bargaining unit employees<sup>2</sup> and therefore presumptively relevant information to which the exclusive bargaining representative of those employees is entitled -- can only be answered after factual findings about the circumstances of their work are made by an Administrative Law Judge. Similarly, Respondent raises the affirmative defenses that the Union waived its right to the information by failing to clarify or narrow the scope of its request and that Respondent was privileged to refuse to furnish the information on account of parties’ collective-bargaining agreement. The validity of these defenses also requires factual findings that can only be made on the basis of record testimony.

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<sup>2</sup> Answering this question will also require fact-finding about which employees are in the bargaining unit.

Respondent additionally argues in its Motion that the information requested by the Union is “highly confidential and proprietary” and that it would be “unduly burdensome” to produce to the Union. However, the burden is squarely on the Respondent to prove both of those affirmative defenses, and it cannot do so without a hearing. Indeed, even if Respondent was successful with those arguments, it would not be completely relieved of its obligations to provide the requested relevant information to the Union. See, e.g. *United States Postal Service (Main Post Office)*, 289 NLRB 942 (1988) (the party asserting confidentiality has the burden of proof); *Pacific Bell Tel. Co. dba SBC Cal.*, 344 NLRB No. 11 (2005) (the parties must bargain in good faith to reach a reasonable accommodation even when confidentiality is claimed); *Frank Chervan, Inc.*, 283 NLRB 752 (1987) (claims that it would be overly burdensome to furnish the other party with information are in the nature of affirmative defenses for which the party making the claim bears the burden of proof); and *Tritac Corp.*, 286 NLRB 522 (1987) (the burden of formulating a reasonable accommodation to an overly burdensome request for relevant information is on the party asserting that the request is overly burdensome).

In sum, without the opportunity to adduce evidence in support of these positions at trial, Respondent’s affirmative defenses must necessarily fail. Respondent has not come close to establishing that it is entitled to judgment as a matter of law. Indeed, if any party is entitled to summary judgment at this point it is the General Counsel and not Respondent. Not only has Respondent improperly misstated the factual landscape at this juncture, it has also misapplied those facts to the law.

The General Counsel intends to establish, and based upon its Motion, Respondent apparently does not contest, that the bargaining unit employees at issue in this case all work on a production line. The General Counsel intends to argue that the legal implication of that fact is that information about the speed of the production line is presumptively relevant information to which the Union is entitled without having to explain why it is relevant or convince Respondent of same. To be sure, Respondent has a due process right to introduce facts to prove that the bargaining unit is different than alleged; that the Union did not request certain information or that Respondent already provided it; that the circumstances of the unit's work are different than those the General Counsel intends to establish; and/or that the information requested was confidential and would be overly burdensome to produce. However, those facts can *only* be adduced at a hearing, and are not properly raised in a Motion for Summary Judgment. This case must therefore go to trial so the material facts relevant to these genuine issues may be established and legal determinations can be made.

### **III. CONCLUSION**

Based on the foregoing, Respondent's Motion should be denied in its entirety.

Dated at Philadelphia, Pennsylvania, this 29th day of August 2018.

/s/ Deena Kobell

/s/ Samuel Schwartz

Deena Kobell, Esq.

Samuel Schwartz, Esq.

Counsel for the General Counsel

National Labor Relations Board – Region 4

615 Chestnut St. 7<sup>th</sup> Floor

Philadelphia, Pennsylvania 19106

**CERTIFICATE OF SERVICE**

We hereby certify that a copy of the GENERAL COUNSEL’S OPPOSITION TO RESPONDENTS MOTION FOR SUMMARY JUDGMENT in HAYWARD LABORATORIES, INC., Case 04-CA-213560, was served by E-filing, and by e-mail on this X day of August 2018, on the following:

***Via E-filing:***

Farah Qureshi, Acting Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1015 Half St. SE  
Washington, DC 20003

***One Copy on the Following E-mails:***

Thomas H. Kohn, Esq.  
Markowitz & Richman  
123 S. Broad Street, Suite 2020  
Philadelphia, PA 19109  
[TKohn@markowitzandrichman.com](mailto:TKohn@markowitzandrichman.com)

George P. Barbatsuly, Esq.  
K&L Gates  
One Newark Center, 10<sup>th</sup> Floor  
Newark, NJ 07102  
[george.barbatsuly@klgates.com](mailto:george.barbatsuly@klgates.com)

/s/ Deena Kobell  
/s/ Samuel Schwartz  
\_\_\_\_\_  
Deena Kobell, Esq.  
Samuel Schwartz, Esq.  
Counsel for the General Counsel  
National Labor Relations Board – Region 4  
615 Chestnut St. 7<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19106