

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

HAYWARD LABORATORIES, INC.

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 773

CASE NO. 04-CA-213560

**REPLY TO UNION’S OPPOSITION TO RESPONDENT’S MOTION FOR SUMMARY
JUDGMENT**

Respondent Hayward Laboratories, Inc. (“Hayward” or “the Company”), by its undersigned counsel, respectfully submits this reply to the opposition of Teamsters Local 773 (the “Union”) to Hayward’s motion for summary judgment.

I. PRELIMINARY STATEMENT

In asserting that the information it requested was relevant to its role as collective bargaining representative, the Union seeks to bypass the threshold inquiry -- whether the information it sought was presumptively relevant. It was not. It was detailed information relating to each of Hayward’s products, Hayward’s expectations regarding the amount of product that should be generated, line speed expectations, and actual line speeds. On its face, it did not relate to bargaining unit employees or their working conditions. Thus, the burden was on the Union to show relevance. The Union did not even attempt to do so. It refused to respond to multiple inquiries from Hayward as to why it needed the information, other than with generalized, conclusory explanations. These were insufficient, as a matter of settled Board law, to require Hayward to provide the information. Thus, summary judgment and dismissal of the Complaint and underlying unfair labor practice charge (“Charge”) are appropriate.

II. LEGAL ARGUMENT

The Union does not contend that there are any fact issues that require resolution. Instead, it makes the conclusory assertion that the information it seeks is “not only presumptively but also is in actuality, relevant.” (Union Opp. at 4). In so arguing, the Union glosses over the threshold issue -- whether the requested information is truly presumptively relevant. As the Board recently confirmed in Management & Training Corp. and Service Employee International Union Local 668, 366 NLRB No. 134 (July 25, 2018) -- a case relied upon by the Union (Union Opp. at 2-3) - - “[i]nformation pertaining to unit employees is presumptively relevant. However, there is no presumption of relevance for information that does not pertain to unit employees; rather the potential relevance must be shown.” 366 NLRB No. 134, slip op. at 2.

Here, the information requested does not concern bargaining unit employees. It is detailed information regarding each and every one of Hayward’s production lines, including (i) the specific products run, (ii) the Company’s expectations regarding the amount of products that should be generated, (iii) what the Company believes the line speeds should be to meet these expectations, and (iv) the actual line speeds. (Johnson Decl., Exh. B). The Union argues that the information “relates directly to the question of the operation of the production line, and, therefore, whether employees can be disciplined for failure to meet Hayward’s production expectation requirements.” (Union Opp. at 3). But nothing in the information request concerned disciplinary actions at all. Merely because the Union allegedly fears that non-unit information may have an impact on unit employees does not transform such non-unit information into presumptively relevant information. Cf. Management & Training Corp., 366 NLRB No. 134, slip op. at 2-3 (information requested relating to pay and benefits for certain non-unit positions, and limited specific financial information bearing on employer’s ability to give unit employees

raises and bonuses, was not presumptively relevant, although union carried its burden of establishing relevance); Disneyland Park, 350 NLRB 1256, 1258 (2007) (“Information about subcontracting agreements, even those relating to bargaining unit employees’ terms and conditions of employment, is not presumptively relevant.”).

Since the information requested was not presumptively relevant, “the burden [was] on the union to demonstrate the relevance.” See Disneyland Park, 350 NLRB at 1257. The Union did not even attempt to meet this burden. The Union relies on the fact that, weeks prior to the information request, a union member had filed a grievance relating to a verbal warning she had received in which she alleged, among other things, that the production line had been moving too fast. (Johnson Decl., Exh. C). But it is undisputed that the Union never pursued that grievance and never requested any information in connection with it. (Johnson Decl., ¶7). Moreover, in response to the Union’s information request, on June 20, 2017, the Company specifically asked whether the request related to a specific grievance. (Johnson Decl., Exh. B). After not answering that question (or providing any other reason for the request) for over a month, the Union finally admitted, during the parties’ meeting on July 24, 2017, that it was not. (Johnson Decl., ¶5).

The Union now argues that the information is relevant to whether employees could be disciplined for not meeting Hayward’s production standards. (Union Opp. at 3-4). But as noted above, the information request did not seek information relating to employee discipline. (Johnson Decl., Exh. C). Nor did the Union ever suggest to the Company that there was an “overall problem” regarding the speed of Hayward’s production lines, as the Union now argues in its opposition brief. (Union Opp. at 4). During the parties’ meeting on July 24, 2017, the Union offered only that it wanted the information on hand in the event the Union ever received a grievance regarding line speeds in the future. (Johnson Decl., ¶5). And its e-mail dated

August 29, 2017, the Union added only the conclusory assertion that it had the right to the information “as the exclusive bargaining agent for this bargaining unit.” (Johnson Decl., Exh. D). In neither case did the Union explain why it claimed to need the information with the requisite “precision” required by Board case law. Disneyland Park, 350 NLRB at 1258 n.5. Rather, the Union’s explanations were mere “generalized, conclusory explanation[s]” of need, which were insufficient as a matter of Board case law to require the Company to provide the requested information. See id.

III. CONCLUSION

Based on the foregoing, and the reasons set forth in its opening brief, Hayward respectfully requests that the Board grant its motion for summary judgment and dismiss the Charge and Complaint with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Reply to Union's Opposition to Respondent's Motion for Summary Judgment were served on August 30, 2018, in the manner set forth below:

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