CASE NO. _____

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

***Petitioner*,**

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD CASE NO. 366 NLRB NO. 175, CASES 28-CA-211043 AND 28-216411

PETITION FOR REVIEW OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO

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International Union of Operating Engineers Local 501, AFL-CIO hereby petitions for review from the Board Decision and Order of the National Labor Relations Board, entitled *Station GRV Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO*, issued as Case 377 NLRB No. 175. A copy of the Board's Decision and Order is attached as Exhibit A.

Dated: September 4, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD
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By: */s/ DAVID A. ROSENFELD*
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Attorneys for Petitioner
INTERNATIONAL UNION OF
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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I certify that on September 4, 2018, the **PETITION FOR REVIEW OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO** was served on all parties or their counsel of record by electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below:

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I certify that the above is true and correct. Executed at Alameda, California, on September 4, 2018.

/s/ Katrina Shaw
Katrina Shaw

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Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino *and* International Union of Operating Engineers Local 501, AFL–CIO. Case 28–CA–211043 and 28–CA–216411

August 27, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

The General Counsel seeks partial summary judgment in this case on the grounds that there are no genuine issues of material fact as to certain allegations in the complaint, and that the Board should find, as a matter of law, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent's employees.[1]

Pursuant to charges filed by the Union on December 5, 2017, and March 8, 2018, and an amended charge filed on March 22, 2018, the General Counsel issued a consolidated complaint (complaint) on April 27, 2018.[2] The complaint alleges, among other things, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information. The Respondent filed an answer admitting in part and denying in part the allegations of the complaint.

Thereafter, on April 12, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment in a related refusal-to-bargain case in which the Respondent contested the Union's certification in Case 28–RC–203653 as the bargaining representative of the employee unit at issue in this proceeding. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58 (2018).[3] In that case, the Board found that since November 6, 2017, the Respondent violated Section 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union. Id., slip op. at 2. On April 13, the Respondent filed a Petition for Review of the Board's April 12 Order, which is pending before the United States Court of Appeals for the District of Columbia Circuit.

On May 8, the General Counsel filed a Motion for Partial Summary Judgment in the current proceeding. On May 14, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. The Union filed a Joinder in Motion for Summary Judgment and Request for Additional Remedies, the Respondent filed an opposition to the Union's Motion and request for additional remedies, and the Union filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

At paragraph 6(a) of the complaint, the General Counsel alleges that about November 6, 2017, the Union requested the following information from the Respondent:

1. A list of current employees including their names, dates of hire, rates of pay, job classifications, last known address, phone number, date of completion of any probationary period, and social security number;

2. Copies of all current job descriptions;

3. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last 24 months;

4. A copy of all company fringe benefit plans including retirement, sick time, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, education, legal services, child care or any plans which relate to the employees;

5. Copies of any company wage or salary plans;

6. A copy of all current company personnel policies, practices and procedures;

7. Copies of all contract agreements related with Property Management and/or owner(s);

8. Copies of all Covenants, Conditions and Restrictions (CCM and/or any additional information related to said agreements in the above[)]; and

9. Complete Enclosed Employer Contact Information Request Form (E411).

Complaint paragraph 6(b) alleges that since March 8, 2018, the Union requested the following information from the Respondent:

1. Please provide your policy and procedures in regards to slot tournaments;

[1] The General Counsel does not seek summary judgment with respect to allegations, in pars. 6(f) through 6(j) of the complaint, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by changing the amount of notice given to bargaining unit employees when their work schedules are changed.

[2] All subsequent dates are in 2018, unless otherwise indicated.

[3] On May 17, the Board issued an Order denying the Union's Motion for Reconsideration of the Board's April 12 Decision and Order. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 91 (2018).

EXHIBIT A

2. How often are slot tournaments held at Green Valley Ranch Hotel and Casino;

3. What type of notice is provided for special projects, like slot tournaments; and

4. What are the safety policies in regards to installs, conversions and preventative maintenance to slot machines when tournaments take place.

In addition, the complaint alleges that since November 6, 2017, and March 8, 2018, respectively, the Respondent has failed and refused to furnish the Union with the information described in paragraphs 6(a) and 6(b), and that by the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith in violation of Section 8(a)(5) and (1) of the Act.

In its answer, the Respondent admits its refusal to furnish the information, but continues to contest the validity of the certification on the basis of the issues raised and decided by the Board in the underlying representation proceeding. In its response to the Notice to Show Cause, the Respondent further contends that the requested information is not limited to bargaining unit employees and there is no showing of the necessity and relevance of the information as it relates to nonunit employees. With respect to the unit employees, the Respondent asserts that the requested social security numbers are not presumptively relevant and there has been no showing of the necessity of such information. In addition, the Respondent contends that certain requested items, including wage and salary plans, policies related to the security and integrity of the Respondent's gaming machines, information about terms negotiated with third party vendors, and precautions taken to combat illegal gaming and money laundering, are confidential and require a trier of fact to balance the Union's need for the information with the Respondent's confidentiality interests.

With respect to the arguments contesting the Union's certification, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not suggest there is any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We further find that there are no factual issues warranting a hearing with respect to most of the items in the Union's information request.[4] Specifically, with the exceptions of the request for employee social security numbers,[5] contract agreements related with property management and/or owner(s), and the covenants, conditions and restrictions,[6] the type of information requested by the Union is presumptively relevant for purposes of collective bargaining and the Respondent has not asserted any basis for rebutting the presumptive relevance. See, e.g., *CVS Albany, LLC d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 Fed. Appx. 10 (D.C. Cir. 2017) (per curiam), and *Metro Health Foundations, Inc.*, 338 NLRB 802, 803 (2003). With respect to the Respondent's claims of confidentiality, "the confidentiality claim must be timely raised . . . and a blanket claim of confidentiality will not satisfy [its] burden of proof." *Mission Foods*, 345 NLRB 788, 791 (2005). Here, in its response to the Notice to Show Cause, the Respondent for the first time asserted nothing more than a blanket claim of confidentiality, without any contention that it has made any offer to accommodate the Union's legitimate interest in relevant information. As such, the Respondent's assertion of confidentiality does not excuse its failure to furnish any of the requested information.

Accordingly, we grant the Motion for Partial Summary Judgment with the exceptions of the allegations concerning the Union's request for social security numbers and its request for the information described in paragraphs 6(a) 7 and 6(a) 8 of the complaint.

On the entire record, the Board makes the following

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[4] The Respondent's contention, that the information request is not specifically limited to bargaining unit employees, does not justify its blanket refusal to comply with the information request. *DIRECTV U.S. DIRECTV Holdings LLC*, 361 NLRB No. 124, slip op. at 2 (2014). However, in accordance with well-established precedent, to the extent the Union's information request could be construed covering both unit and nonunit employees, it shall be construed as pertaining to unit employees' terms and conditions of employment. See Id.; *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003).

[5] The Board has held that employee social security numbers are not presumptively relevant and that the requesting union must demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam). Here the Union's request did not specify why it wanted this information and the Union has not otherwise demonstrated its relevance. See *Pallet Cos.*, 361 NLRB 339, 340 fn. 4 (2014), enfd. mem. 634 Fed. Appx. 800 (D.C. Cir. 2015) (per curiam). We therefore deny summary judgment as to this item and remand this issue to the Region for further appropriate action.

[6] The requests for contract agreements and for covenants, conditions and restrictions appear to seek information about matters outside the bargaining unit and, as such, are not presumptively relevant. See *KIRO, Inc.*, 317 NLRB 1325, 1328 (1995) (information with respect to commercial transactions between the respondent and other company not presumptively relevant). Therefore, we deny summary judgment with respect to those items and remand those issues to the Regional Director for further appropriate action.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada, and has been engaged in operating a hotel and casino.

In conducting its operations during the 12-month period ending December 5, 2017, the Respondent purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Nevada and derived gross revenues in excess of $500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Sheila Lee and Valerie Mural, the Respondent's senior vice president of human resources, have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.[7]

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time, and extra board slot technicians and utility technicians employed by the Employer at its Henderson, Nevada facility, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

At all times since October 16, 2017, the Union has been certified as the exclusive collective-bargaining representative of the employees in the above-referenced unit under Section 9(a) of the Act.

About November 6, 2017, and March 8, 2018, the Union requested that the Respondent furnish information described above to the Union, and the Respondent failed and refused to furnish the requested information. With the exceptions of social security numbers, contract agreements, and the covenants, conditions and restrictions, the requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, and the Respondent's failure to furnish this information constitutes an unlawful refusal to bargain collectively with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about November 6, 2017, and March 8, 2018, to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondents' unit employees, we shall order the Respondents to furnish the Union with information requested November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with Property Management and/or owner(s), and copies of covenants, conditions and restrictions, (CCM and/or any additional information related to said agreements in the above).[8]

The Union requests additional enhanced remedies.[9] Contrary to the Union's assertions, there has been no showing that the Board's traditional remedies are insufficient to redress the information request violations committed by the Respondent. Accordingly, we deny the Union's request for additional remedies.

ORDER

The National Labor Relations Board orders that the Respondent, Station GVR Acquisition, LLC d/b/a Green

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[7] In its answer, the Respondent denies the complaint allegation that Sheila Lee is its director of human resources, but admits that Lee is a supervisor and an agent within the meaning of the Act.

[8] The General Counsel has requested that the initial certification year be extended to begin on the date that the Respondent commences to bargain in good faith with the Union. Because this same remedy was requested and grated in our previous decision, it is unnecessary to order it here again. *Station GVR Acquisition, LLC*, 366 NLRB No. 58, slip op. at 2.

[9] Because the Union has not shown that the traditional remedies are inadequate, we find it unnecessary to pass on the Respondent's motion to strike.

Valley Ranch Resort Spa Casino, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Union of Operating Engineers Local 501, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondents' unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

(b) Within 14 days after service by the Region, post at its facility in Henderson, Nevada, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is denied with respect to the allegation concerning social security numbers in paragraph 6(a)(1) of the complaint, and to the allegations in paragraphs 6(a)7 and 8 of the complaint, and that these allegations are remanded to the Regional Director for Region 28 for further appropriate action.

Dated, Washington, D.C. August 27, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Union of Operating Engineers Local 501, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

STATION GVR ACQUISITION, LLC D/B/A GREEN VALLEY RANCH RESORT SPA CASINO

The Board's decision can be found at https://www.nlrb.gov/case/28-CA-211043 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.