

**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 GENERAL COUNSEL'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 the General Counsel ("GC") to Hayward's motion for summary judgment.

I. PRELIMINARY STATEMENT

Respectfully, the GC appears to have missed the point of Hayward's summary judgment motion. Rather than squarely address the threshold issue -- whether the information requested by Teamsters Local 773 (the "Union") was presumptively relevant -- the GC raises a series of tangential issues in an effort to manufacture a dispute of fact. But none of these tangential issues raises a dispute of material fact. The scope of the Union's information request, and the Company's response, are matters of undisputed record evidence based on e-mails between the Union and the Company. These e-mails show beyond dispute that the information request did not relate to bargaining unit employees -- and thus, was not presumptively relevant -- and the Union never articulated a need for the information beyond generalized, conclusory explanations. Thus, as a matter of law, Hayward was not required to provide the requested information, and the Complaint and underlying unfair labor practice charge ("Charge") should be dismissed.

II. LEGAL ARGUMENT

To defeat a summary judgment motion, the non-moving party must identify a genuine issue of material fact that warrants a hearing. See Security Walls, LLC, 361 NLRB 348, 348 (2014) (summary judgment is proper when the record establishes that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law”) (emphasis added; citations and internal quotations omitted). As to materiality, the Supreme Court has explained that “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Here, the GC fails to present a genuine issue of material fact. Instead, it identifies four purported fact issues derived from the pleadings that it contends warrant a hearing. (GC Br. at 3). But all of these alleged issues are tangential and wholly immaterial to the threshold legal issue in dispute -- whether the information the Union requested was presumptively relevant.

First, the GC points to Hayward’s denial of the GC’s description of the bargaining unit in paragraph 5(a) of the Complaint. (GC Br. at 3). Hayward denies the GC’s allegations because the GC’s description of the bargaining unit in its Complaint does not precisely match the description set forth in the collective bargaining agreement (“CBA”).¹ The Board need not resolve this minor issue for purposes of this summary judgment motion. Even if the unit

¹ The GC alleges that the bargaining unit comprises “[a]ll 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 in the Act.” (Complaint, ¶ 5(a)). The bargaining unit as described in the CBA is the unit “as certified by the National Labor Relations Board but shall not include employees in the mechanic, maintenance, distribution or batcher classifications.” Declaration of Melissa Johnson (“Johnson Decl.”), Exh. A, Art. 1.1).

comprises “[a]ll full-time and regular part-time production employees,” as the GC argues, the information requested did not, on its face, relate to any production employees (or, for that matter, any class of employees). (See Johnson Decl., Exh. B). Thus, as a matter of law, the information was not presumptively relevant. See Management & Training Corp. and Service Employee International Union Local 668, 366 NLRB No. 134, slip op. at 2 (July 25, 2018) (“Information 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”).

Second, the GC points to Hayward’s denial of the GC’s allegation in paragraph 6(c) of the Complaint that “on July 24, 2017, 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.’” (GC Br. at 3). However, this denial is of no consequence, since there is no dispute that the Union made the identical request in its e-mail dated August 29, 2017. (Johnson Decl., Exh. E) (“I am requesting yet again a breakdown sheet, like the Company has already provided me, on all products that are run at your facility.”). Even if, as the GC contends, the information had been previously requested on July 24, 2017, it does not change the fact that the information did not relate to bargaining unit employees and, thus, was not presumptively relevant.

Third, the GC points to Hayward’s denial of the GC’s allegations that it “has failed and refused to furnish the Union with information it requested in writing.” (GC Br. at 3-4). At the outset, Hayward’s denial is based on the fact that, as the GC acknowledges elsewhere in its Complaint, Hayward undisputedly provided the Union with certain information responsive to the Union’s request on or about July 24, 2017 -- specifically, a “breakdown sheet” for “8.5 oz. C/B

Body Oil.” (Complaint, ¶ 6(c); see also Johnson Decl., Exh. D). The GC’s internally inconsistent allegations in its Complaint are reason alone to reject the GC’s reliance on this denial. And even if, as the GC alleges in the Complaint, Hayward failed to provide the Union with any of the information it requested, again, the information was not presumptively relevant because it did not relate to bargaining unit employees.

Lastly, the GC points to the defenses Hayward asserted in its Answer to the Complaint. (GC Br. at 4). The GC claims that Hayward’s defense, that “[t]he purported relevance of the requested information was not and should not have been apparent to Hayward under the circumstances,” somehow requires that “evidence be adduced to establish what those ‘circumstances’ were.” (Id.). However, the GC identifies no such evidence. Instead, it suggests that a hearing is needed to enable Hayward to introduce facts to prove “that the circumstances of the unit’s work are different than those the General Counsel intends to establish.” (GC Br. at 6). To the contrary, unless the GC can establish that the information requested was presumptively relevant, it is the GC’s burden to “present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances.” See Disneyland Park, 350 NLRB 1256, 1257 (2007) (footnote omitted). Based on the e-mails exchanged between the Union and Hayward -- which are undisputed matters of record (Johnson Decl., Exhs. B, D) -- the GC cannot carry this burden. These e-mails confirm that the Union offered no explanation for seeking the information, other than its desire to have the information on hand in the event of a future grievance concerning the speed of Hayward’s production line, and its conclusory assertion that it is entitled to the information “as the exclusive bargaining agent for this bargaining unit.” (Johnson Decl., Exhs. B, D). These explanations were insufficient as a matter of law to require

Hayward to provide the requested information. Disneyland Park, 350 NLRB at 1257 n.5 (“The union’s explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information.”).²

In short, the GC has identified no disputes of material fact that would warrant denial of Hayward’s motion for summary judgment. Instead, as the GC effectively concedes, this case is not about fact disputes at all, but rather, about “the legal implication” of the fact that “the bargaining unit employees at issue in this case all work on a production line.” (GC Br. at 6). The GC contends that this fact somehow means 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.” (GC Br. at 6). But the GC’s position is at odds with settled Board law providing that where, as here, the information requested does not specifically pertain to bargaining unit employees or their terms or conditions of employment, it is not presumptively relevant, and the Union must establish its potential relevance. See Management & Training Corp., 366 NLRB No. 134, slip op. at 2-3; Disneyland Park, 350 NLRB at 1257 & n.5. Because the Union undisputedly never established or even articulated the relevance of the requested information, beyond vague generalities (see Johnson Decl., Exhs. B, D), Hayward lawfully declined to provide it with the requested information.

² Given these undisputed facts, it is not necessary to reach Hayward’s other defenses that the GC contends create disputes of fact -- that is, that the Union waived the right to the information requested; that the information requested is highly confidential and proprietary; and that it would be unduly burdensome to produce to the Union. (GC Br. at 4-5). These defenses would only come into play if the information the Union seeks were otherwise relevant.

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 September 5, 2018, in the manner set forth below:

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