

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

FLORIDA POWER & LIGHT  
COMPANY

and

Case 12-CA-211064

INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS,  
AFL-CIO, LOCAL UNION 641.

---

**POST-HEARING BRIEF OF RESPONDENT,  
FLORIDA POWER & LIGHT COMPANY**

Respondent, Florida Power & Light Company (“FPL” or “Company”), by and through the undersigned counsel, hereby submits its post-hearing brief. This matter arose from a lengthy charge filed on December 5, 2017 by the International Brotherhood of Electrical Workers Local Union 641’s (“IBEW” or “Union”) asserting a number of alleged violations by FPL for failing to provide information to the Union. The National Labor Relations Board issued a Complaint on just two of the requests contained in an October 9, 2017 email from the Union.

A hearing was held before an Administrative Law Judge Charles J. Muhl at the Naples City Hall on Monday, October 29, 2018. The parties agreed to submit post-hearing briefs by December 3, 2018.

**A. FACTS**

**I. THE PARTIES**

FPL is an electric utility that generates, transmits, distributes electricity in the state of Florida. Hr’g Tr. 17:15. IBEW Local 641 is one of several locals comprising System Council U-4, which is the representative of FPL’s bargaining unit employees. Hr’g Tr. 36:8.

Greg King is the President of IBEW Local 641 and is employed by FPL as a Senior Line Specialist. Hr'g Tr. 36:12, 39:2. Mr. King sent the information request which is at issue in this matter. Hr'g Tr. 51:9. Bruce Jamison is employed by FPL as the Area Manager for the Naples region, and was the recipient of Mr. King's request. Hr'g Tr. 17:8.

## **II. THE INFORMATION REQUEST OF OCTOBER 9, 2017**

On October 9, 2017, Mr. King sent an email to Mr. Jamison requesting certain information related to storm restoration activities following Hurricane Irma<sup>1</sup>. The information requested in the email was:

- 1) Utility and contractor count by S/C<sup>2</sup> boundaries to include BSW, FMO, GDO, and GGO. This should include foreign utility, contractors, embedded contractors as well as FPL crews traveled from other areas.
- 2) Timesheets for all of the requested in line 1. Timesheets should also be included for Customer Service and T&S.<sup>3</sup>
- 3) Copies of the agreement between FPL and all external utilities and contractors as well as the embedded contractors to perform work during hurricane Irma event.
- 4) A list of all patrollers to include dates and hours worked for the areas in line 1.
- 5) A list of all tickets assigned to the above or their PIC.
- 6) This information should be for the time period 9-15-2017 through 10-8-2017.

General Counsel ("GC") Ex. 7. Mr. King's request included a deadline of October 19, 2017 – just ten days later. Mr. Jamison, who handles information requests for the area, had concerns about his ability to gather the information within ten days, in part because the request sought information related to the massive Hurricane Irma restoration activities, and also because storm restoration activities were still continuing throughout the state of Florida. Accordingly, Mr.

---

<sup>1</sup> Hurricane Irma made landfall in Southwest Florida, near Naples, on September 10, 2017, and over the next few days it traveled through the state of Florida impacting nearly the entire state. The damage it caused to utility resources resulted in the largest restoration effort in the history of United States. Hr'g Tr. 27:8-11, 48:14-19, 84:12-19.

<sup>2</sup> Definitions for the acronyms are included in the Hearing Transcript beginning at page 52.

<sup>3</sup> Only items 1 and 2 of Mr. King's request are at issue in this matter. Compl. ¶ 6. The remaining items were resolved before the Complaint was issued.

Jamison asked whether Mr. King would narrow the request. Mr. King repeatedly refused to narrow the scope of the information sought, but he did agree that Mr. Jamison could provide the responsive information by November 27, 2017. GC Ex. 7.

On November 27, 2017, Mr. Jamison responded to the information request by email and specifically asked Mr. King to "review the information that is provided and provide feedback as to whether this satisfies your request". GC Ex 7. Mr. King never responded. Instead, about a week later, on December 5, 2017, Mr. King filed a charge with the NLRB.

### **III. THE SUBSTANCE OF FPL's RESPONSE**

On November 27, 2017, Mr. Jamison responded to each of Mr. King's requests by email and attached the relevant documents. On December 1, 2017 Mr. Jamison placed additional information too large to email in Mr. King's mailbox at the location where they both work. GC Ex. 7; Hr'g Tr. 33:4-6.

For request number one, Mr. Jamison provided a document containing the utility and contractor count for the service center boundary area requested. As Mr. Jamison explained:

...on Exhibit 9 that first column has the Travel Team Name, and that will be either a utility or contractor that came in from the outside the Company, or it will be the contractor that came in...column two, is the count...Mr. King wanted it by service center boundaries, and as he alluded to the boundaries, we had four staging sites in the area. And that's the Site Name...[w]e had four different staging sites, and those staging sites basically were there for Naples and the Fort Myers territory.

Hr'g Tr 86:17-87:11. Mr. Jamison further elaborated that the acronyms for each service center requested by Mr. King became staging site boundaries during the hurricane restoration efforts and that he provided the requisite information pertaining to those boundaries. Hr'g Tr. 87:9-19; GC Ex. 9. That document also contained additional information not requested by Mr. King, such as the names of each contractor who worked in his area during Hurricane Irma restoration, the start and end date of the contractor's assignment, and the specific staging sites from which each

contractor worked. Hr'g Tr. 85:21-88:19. Mr. Jamison further explained that no FPL crews traveled from outside the area because they were needed in their home areas for restoration work, and therefore they were not identified on Exhibit 9. Hr'g Tr. 87:20-88:6.

For request number two, FPL does not have possession of contractor timesheets for work performed during storm restoration, but Mr. Jamison advised Mr. King in his email that all of the contractors were on a 6:00 AM to 10:00 PM shift. GC Ex. 7; Hr'g Tr. 89:8-11, 96:9-24, 101:19-102:25<sup>4</sup>. Mr. Jamison knew this to be true, since he was responsible for obtaining approval of requests for contractors to work outside these hours, and he had received no such requests:

JUDGE MUHL: Can the contractors work outside those hours, or are they restricted to those hours?

THE WITNESS: They are restricted to those hours. They would have to get approval before working outside of those hours.

JUDGE MUHL: And who gives that approval?

THE WITNESS: It would be either the incident commander, which is myself or the deputy who I report to. So if I was to have a contractor work outside of those hours, I have to go through the command center to get that request, to get that filled.

JUDGE MUHL: And I think you already testified to this. The written communication in GC-7, that was the entirety of the correspondence between you and Mr. King concerning this request?

THE WITNESS: Yes, sir

Hr'g Tr. 100:22-101:12.

As to the request for FPL employee timesheets, Mr. Jamison provided all of the timesheets requested by Mr. King. Mr. Jamison advised in his email that "Timesheets for Customer Service and Transmission/Substation are still in the process of being gathered..." Mr. Jamison placed these documents in Mr. King's mailbox on December 1, 2017.

Q. And you gave them time sheets for customer service and transmission/substation, you said that they were in the process of being gathered, did you submit those by 12/1?

---

<sup>4</sup> Mr. Jamison explained that in the past, the Company has provided timesheets to the Union for "regular event[s]," but that "[d]uring the storm we do not get those time sheets. Those time sheets go through another vendor that as far as processing for payment. We don't see those timesheets."

A. Yes, sir. I did.

Q. And those were for FPL employees?

A. That is correct.

Q. So you have access to those?

A. Yes. Those are for FPL employees that work in customer service and transmission/substation.

Q. Why no substation time sheets?

A. Based on information that I had, the substation employees were not working out of those four staging sites. They actually worked north of the --

Q. So you did look into that?

A. Yes, sir.

Q. And you found they weren't working?

A. That's correct.

Q. And why was there nothing beyond September 24th?

A. Because effectively, the state, we were essentially restored, and the staging sites were shut down.

Q. Was there anything else with respect to the requests in 1 and 2 that you didn't give Mr. King or that wasn't relevant or you didn't have?

A. No, sir.

Hr'g Tr. 90:1-24.

Mr. Jamison provided Mr. King with all of the information responsive to the requests, and he believed that he had provided Mr. King all of the information he needed. Hr'g Tr. 91. Significantly, in his November 27, 2017 correspondence to Mr. King, Mr. Jamison specifically requested that Mr. King "review the information that is provided and provide feedback as to whether this satisfies your request." GC Ex. 7 (emphasis added). Mr. King failed to respond in any respect to Mr. Jamison. Rather than requesting clarification, responding that he needed further information or continuing the dialogue with Mr. Jamison, Mr. King proceeded to file a charge in the following days. Hr'g Tr. 91:3-19.

At the October 29, 2018, hearing, Mr. King testified to what information he believed was outstanding:

Q. So what information in particular is the Union still waiting to receive from the Employer?

A. Contractor time sheets, a copy of the agreement stating what hours the contractors would work if it was -- if they had something they were allotted to work

outside of the 6:00 a.m. to 10:00 p.m. schedules, which we were told they would be working. Substation time sheets, customer service for the month of October. And if there was [*sic*] any outside FPL crews that traveled to the area to work.

Hr'g Tr. 76:2-77:3 (emphasis added). As was revealed at the hearing, the information identified by Mr. King as outstanding is not in FPL's possession, does not exist or is outside the scope of the NLRB Complaint. Specifically:

- Contractor timesheets are not in FPL's possession as they are not provided to FPL during storm restoration activities (Hr'g Tr. 89:8-11, 96:9-24, 101:19-102:25);
- The request for contractor or vendor agreements is outside the scope of the NLRB's Complaint (Compl. ¶ 6; Hr'g Tr. 68:13-25);
- No substation employees performed storm restoration work in the relevant area and thus no responsive timesheets exist (Hr'g Tr. 90:10-17);
- No customer service employees performed storm restoration work during the month of October in the relevant area, and thus no responsive timesheets exist for October<sup>5</sup> (Hr'g Tr. 90:1-9, 18-20); and,
- No FPL crews traveled to the relevant area to perform storm restoration work (Hr'g Tr. 32:5-13, 87:20-88:6).

The five items listed above are the entirety of the items that Mr. King identified outstanding, yet he never communicated this to Mr. Jamison or FPL until the October 29, 2018 hearing.

## **B. LEGAL ARGUMENT**

FPL acted reasonably in processing and responding to Mr. King's information requests and did not violate sections 8(a)(1) and (5) of the National Labor Relations Act. As stated by the Administrative Law Judge in his Decision in *Springfield Day Nursery*:

The Company is obligated "to provide information that is needed by the bargaining representative for the proper performance of its duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-443 (1967). However, the duty to furnish requested information is not defined in terms of a per se rule, but rather, a reasonable good-faith effort to respond to the request as promptly as circumstances allow. *Good Life*

---

<sup>5</sup> As Mr. King testified, during storm restoration the duties of customer service employees are "mainly for support to deliver material, if anything is needed, deliver meals to the crews if they are working out in the field...extra set of hands...basically support staff." Hr'g Tr. 54:10-15.

*Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993); *E. I. Du Pont & Co.*, 291 NLRB 759 fn. 1 (1988).

*Springfield Day Nursery*, 362 NLRB No. 30 (Mar. 19, 2015). Here, FPL provided the information needed by the Union and engaged in a good faith effort to respond completely and as promptly as the circumstances allowed.

**I. FPL PROVIDED A SUFFICIENT AND REASONABLE RESPONSE TO EACH REQUEST IN ACCORDANCE WITH SECTIONS 8(A)(1) AND (5).**

The record shows that Mr. Jamison responded fully and had a good faith, reasonable belief that Mr. King found the response to be adequate. Mr. King's October 9, 2017, request for five separate items came while FPL was still engaged in storm restoration work following the devastating Hurricane Irma. Mr. King refused Mr. Jamison's request to narrow the scope of his request, but did finally agree to extend the time to respond. With respect to item one, Mr. Jamison provided Mr. King with all existing responsive information – the contractor and utility count for the service center boundary identified – as well as additional information – contractor and utility name, specific staging site and start and stop dates. With respect to request number two, Mr. Jamison likewise provided all existing responsive information within the Company's control. Accordingly, it is entirely unclear why the NLRB has pursued a Complaint on these requests.

**II. MR. KING ADMITTEDLY NEVER COMMUNICATED TO MR. JAMISON THAT THE RESPONSE TO HIS REQUEST WAS SOMEHOW INADEQUATE IN THAT HE NEEDED ADDITIONAL INFORMATION.**

The record is clear that Mr. Jamison responded in good faith to each of the October 9, 2017 requests made by Mr. King. In fact, the only information that Mr. Jamison did not provide was information that did not exist or which he was unable to obtain, since non-employee contractor timesheets are not provided to the company during large restoration situations such as post hurricane restorations. Even without the timesheets, Mr. Jamison believed he had sufficient

knowledge as to when the contractors worked in his area of responsibility and he indicated as such in his email response on November 27, 2017.

Significantly, in the final correspondence between Mr. Jamison and Mr. King on November 27 Mr. Jamison specifically asked Mr. King to “please review the information that is provided and provide feedback as to whether this satisfies your request.” GC Ex. 7. When Mr. King failed to respond, Mr. Jamison reasonably believed that Mr. King had what he needed to fulfill his duties as a union representative. Had Mr. King responded and inquired as to items he believed to be missing or inadequate, Mr. Jamison could have explained to him exactly what he explained during the hearing. Instead, it was not until the October 29, 2018, hearing that Mr. King articulated the information he believed to be missing, specifically, contractor timesheets, substation employee timesheets, customer service employee timesheets for October 2017, and counts for FPL crews that traveled to the area to work – each of which either did not exist or was not in the custody or control of FPL.

a. Mr. King had a duty to continue the dialogue.

It was incumbent upon Mr. King to continue the dialogue and respond to Mr. Jamison if he felt he needed more information. The NLRB has consistently held that there is no violation where the employer had reason to believe it had satisfied the union's requests, and the union never requested additional information or otherwise indicated that the information provided was insufficient. *Internat'l Game Technology*, 366 NLRB No 170 (2018). In *International*, the Board found no violation where “...the Union's silence would reasonably signal to the Respondent that it was satisfied with the information it had received and that the list of locations was not relevant or needed.” In *Whitesell Corp.*, 355 NLRB (2010), it was held that the employer fulfilled its duty

when it provided the information that it possessed and the union did not renew its request or inform the employer that the request remained unfulfilled.

In *Day Automotive Group*, 348 NLRB 1257 (2006), a similar result was reached by the Board where the company provided information in good faith and the union gave no indication that it needed or was expecting more information. The Board concluded that:

The evidence shows that the respondent gave the union what information it had with respect to the Great West plan. *Kathleen's Bakeshop LLC*, 337 NLRB 1081, 1082 (2002). It cannot be expected to provide information it does not have. Under these circumstances, where the respondent had provided information it had every reason to believe satisfied the union's requests, where the union gave no indication that it needed or was expecting more information, where it neither renewed its information requests nor identified areas about which it needed more detail or ask that specific questions be addressed, and where it continued to reject the respondent's healthcare proposal is costing more and providing less, I conclude that the respondent did not fail or refuse to provide relevant information in violation of section 8a (5) and (1).

*Id.* at \*1263.

Application of these cases to the present Complaint warrants a similar finding. Mr. King was specifically asked whether the information provided by Mr. Jamison satisfied his request. Mr. King admittedly never responded to Mr. Jamison that the information Mr. Jamison had provided was inadequate. It was therefore reasonable for Mr. Jamison to assume that he had complied with the request. As these cases hold, it is simply unreasonable for the Union to ignore the dialogue, opt for silence and proceed to the filing of an NLRB charge mere days after receiving the Company's response. See *Springfield Day Nursery*, 362 NLRB 30 (2015) ("I agree with the Company that, under the circumstances, it was unreasonable for the Union to simply wait a mere two weeks before filing a charge, especially since the Company was cooperating and attempting to provide relevant information." (citing *Albertson's Inc.*, 351 NLRB No. 21, slip op. at 1-3 (2007) (two-month delay in responding to Union's request for information not unreasonable))).

b. The Company's response was adequate and reasonable.

As noted by the Board in the *International Game Technology* decision, this is also not a circumstance where the Company's response was "plainly inadequate." See *Airport Aviation Services*, 292 NLRB 823 (1989) (finding a violation occurred notwithstanding the union's failure to apprise the employer that its responses were insufficient.) To the contrary, Mr. Jamison responded on time and with an adequate and good faith response to each of Mr. King's requests. More importantly, he specifically asked Mr. King if the responses were sufficient. Mr. King had an obligation to continue the dialogue if he was dissatisfied with the response and also to identify what additional information he needed. To allow the Union to simply end the communication and proceed to filing a charge would be tantamount to encouraging the repeated filing of charges at any stage in the process.

c. The General Counsel's position mischaracterizes the Union's request and FPL's response.

In its Complaint and at the hearing, the General Counsel mischaracterized the Parties' communications regarding the Union's request as well as the Company's response to requests one and two. The record shows that the Company engaged in a number of communications with Mr. King both in an effort to narrow the scope of the requests and to reach agreement on a date certain to provide the information. The General Counsel focused on these communications in an apparent attempt to show that the company unreasonably delayed its response. However, the record also shows that the Company provided all of the information it was able to obtain, as agreed. Unfortunately, it was not until the hearing that Mr. King communicated the five items he felt were outstanding when it is entirely likely that Mr. King would have been satisfied with the Company's response had he just inquired further. Instead, Mr. King took the extreme and unnecessary step of immediately filing a charge.

### CONCLUSION

The Company acted reasonably and in good faith in responding to the Union's information request. The Union's failure to communicate with the Company regarding information it mistakenly believed was missing from the response is fatal to its charge. Accordingly, the Company respectfully requests that the Board dismiss the Complaint in its entirety.

Dated: December 3, 2018

/s/ Richard Joy  
Richard J. Joy, Esq.  
E-Mail: Richard.Joy@fpl.com  
Christin M. Russell, Esq.  
Email: Christin.Russell@fpl.com  
Florida Power & Light Company Law Department  
700 Universe Blvd., LAW/JB  
Juno Beach, FL 33408  
Telephone: (561) 304-5439  
Attorneys for Florida Power & Light Company

### CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2018, a true and correct copy of the foregoing was served by e-mail on all counsel or parties of record on the Service List below.

/s/ Richard J. Joy

#### Service List

Rafael Aybar  
Counsel for the General Counsel  
National Labor Relations Board - Region 12  
Rafael.Aybar@nrlb.gov

Honorable Charles J. Muhl  
Administrative Law Judge  
Barbara.Brown@nrlb.gov

Greg E. King  
President, IBEW Local 641  
gkinglu641@aol.com