

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

G4S SECURE SOLUTIONS (USA) INC.

and

Case 19-CA-221172

**WASTE TREATMENT SECURITY GUARDS
UNION 161**

**COUNSEL FOR THE GENERAL COUNSEL'S
ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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Pursuant to § 102.46 of the Rules and Regulations of the National Labor Relations Board (“Board”), Counsel for the General Counsel submits this Answering Brief to the Exceptions and Supporting Brief filed by G4S Secure Solutions (USA), Inc. (“Respondent”), to the March 25, 2019 decision of Administrative Law Judge Eleanor Laws (the “ALJD”).¹

Respondent’s exceptions dispute the Judge Laws’ finding that Respondent violated §§ 8(a)(1) and (5) of the National Labor Relations Act (“Act”) when it failed and refused to provide relevant information requested by the Charging Party, Waste Treatment Plant Security Guards Union 161 (“Union”). As discussed below, the Judge’s findings are appropriate, proper, and fully supported by the record as well as current Board law. Accordingly, the Board should sustain the Administrative Law Judge’s findings of fact, conclusions of law proposed remedy and recommended Order with respect to Respondent’s violations of §§ 8(a)(1) and (5) of the Act.

I. OVERVIEW

Respondent, an employer engaged in commerce within the meaning of the Act, is a Florida corporation that provides security services to, among others, Bechtel National, Inc. (“Bechtel”). (JD_2: 5-7; SR 3-4).² Bechtel is a contractor with the United States Department of Energy (“DOE”) responsible for processing and sterilizing radioactive waste at the Hanford Site in south central Washington State, near Richland. (Exhibit H, p.1). Under its contract with the DOE, Bechtel is required to provide

¹ References to the ALJD are noted as (JD_:_), which shows the decision page and line, respectively. References to Respondent’s Exceptions are referred to by the number given by Respondent. References to the Stipulated Record are referred to as “SR_”, with the cited page number; references to Exhibits to the Stipulated Record are simply referred to as “Exhibit__.”

²

specified levels of security. (Exhibit H, p.2). Respondent, pursuant to contract, provides security to Bechtel at its various sites in and around Richland, including its offices, as well as Bechtel's Waste Treatment Plant ("WTP") (collectively, the "Bechtel sites"). (JD 2:15-19; SR 3).

Securitas Security Services USA, Inc. ("Securitas"), provided these services from around 2008 until Respondent took over as of around November 13, 2017. (JD 2:15-19; SR 3; Exhibit H, p.2). Prior to Respondent succeeding Securitas, the employees working at the Bechtel sites ("Unit") selected the International Guards Union of America, Region 1, as their exclusive collective bargaining representative on October 14, 2016.³ (JD 2:30-31; SR 4). On December 21, 2017, the certification was amended to reflect that the Union was the exclusive collective bargaining representative of the Unit. (JD 2:32-33; (SR 4).

Meanwhile, in early January of 2017, Bechtel and Securitas began bargaining for a collective bargaining agreement. (Exhibit H, pp.3-4). It was then that the Union first became aware that Bechtel exercised some degree of control over the terms and conditions of employment of the Unit employees then working for Securitas. (Exhibit H, pp.3-4). Accordingly, the Union requested, *inter alia*, a copy of the contract between Bechtel and Securitas. Securitas refused to provide the contract. That refusal to provide requested relevant information led to an Advice Memo (Exhibit H) and issuance of a complaint, and ultimately became part of an informal Settlement Agreement (Exhibit G).

³ The Unit includes all full time and regular part-time security guards, including leads, at the WTP, excluding all other employees, office clerical employees, confidential employees, and supervisors as defined in the Act.

When Respondent and the Union entered into negotiations for an initial contract, the Union requested a copy of Respondent's contract with Bechtel on May 17, 2018, just as it had with Respondent's predecessor, Securitas. (SR 5). The request was reiterated in emails (JD 3:6; SR 5; Exhibit D, pp.2 and 1). Respondent's General Manager and admitted supervisor/agent, Christopher Phillips ("Phillips"), refused to provide a copy of Respondent's contract with Bechtel by email dated May 18. (JD 3:11-19; SR 4, 6; Exhibit D). The Union responded with a second email on May 18. (JD 3:20-29; SR p.6; Exhibit D, p.1). In this second email, the Union explained to Respondent that the contract was necessary and relevant to the Union's bargaining duties and explained that the Division of Advice for the Board had previously agreed with the Union's position. (JD 3:20-29; SR p. 6; Exhibit D, p.1). Phillips again refused, stating that if the Union could point to Board case law supporting the Union's contention that it had a right to a copy of the contract with Bechtel, Respondent would "take another look at your request." (JD 3:31-37; SR p. 6; Exhibit D, p.1).

In response to Phillip's May 18, 2018 second email, on May 20 and May 24, respectively, the Union provided Respondent with copies of the Settlement Agreement between Securitas and the Union in Case 19-CA-191814 (Exhibit G) and a copy of the Advice Memo (Exhibit H) that specifically addressed the joint employer relationship between Bechtel and Securitas to explain why the Union had a right to the requested information. (JD 5:41-6:6; SR 5). The Advice Memo contained myriad citations to the Board law Phillips had requested. In its May 20 email, the Union also made a further request for information regarding communications between Bechtel and Respondent directly related to terms and conditions of employment of the Unit. (JD 3:38-4:25; SR 5;

Exhibit F, pp.1-2). The Union then, on May 20 and 22, requested “all information concerning the cost of running the WTP contract, including but not limited to wages, benefits, overhead and other related factors.” (JD 4:21-22; SR 5; Exhibit E, pp.1-2). Phillips repeatedly refused to provide the information that the Union requested. (JD 4:41-5:3; SR 6; Exhibit D, p.1; Exhibit E, pp.1 and 3; Exhibit F, p.1).

The totality of the information requested by the Union from May 17 to 24 included:

1. A copy of the contract between Respondent and Bechtel (SR 5; Exhibit D, pp.1-2);
2. All communications between Respondent and Bechtel related to Respondent’s employees, including, but not limited to;
 - (a) Emails and documents exchanged from the contract award date to current date;
 - (b) Requested post transfers;
 - (c) Discipline;
 - (d) Negative reviews of employees; and
 - (e) Lists of employees that are “good” and “bad.” (SR 5; Exhibit F, pp.1-2) 5 3.
3. All information concerning the cost of running the WTP contract, including, but not limited to wages, benefits, overhead, and other related factors. (SR 5; Exhibit E, pp.2 and 4).

Respondent refused to provide any of the requested information detailed above. (JD 6:10-14; SR 6; Exhibit D, p.1; Exhibit E, pp.1 and 3; Exhibit F, p.1). On these facts,

the Administrative Law Judge correctly determined that Respondent violated §§ 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with relevant requested information. (JD 8:38-39).

II. RESPONDENT'S EXCEPTIONS ARE WITHOUT MERIT AND THE ADMINISTRATIVE LAW JUDGE PROPERLY FOUND THAT RESPONDENT VIOLATED THE ACT

Respondent's brief in support of its exceptions is replete with the same disingenuous misapprehensions and arguments presented to the Administrative Law Judge. Based on these, Respondent that the Administrative Law Judge failed in three main areas:

(1) Finding that the joint employer issue was central to the Union's requests for information and that the Stipulated Settlement Agreement and Advice Memo supported the Union's explanation of relevance;

(2) Finding that the Union provided explanation and demonstration of relevance of the information it requested by supplying Respondent with copies of the Settlement Agreement between the Union and Respondent's predecessor and a copy of an Advice Memo that also addressed Respondent's predecessor as well as its relationship with the mutual client, Bechtel; and

(3) Finding that the Union was not obligated to overcome a chimeric legal presumption of irrelevance.

Respondent is mistaken. The Administrative Law Judge had ample support in both law and fact to support her conclusions.

A. The Administrative Law Judge Properly Found that the Joint Employer Issue was Central to the Union's Information Requests, and that the Advice Memo and Settlement Agreement Supported the Union's Explanation of Relevance (Exceptions 1, 2, 3, 4)

The Union knew from the Advice Memo that its failure to ascertain the relationship between Respondent and Bechtel could have significant consequences in bargaining. (See, e.g., Exhibit H, p.3 n.6 and p.6). Second, the information related directly to the Union's ability to intelligently and knowledgably negotiate for the Unit with the proper entity, including whether the Union should be jointly negotiating with two employers. (SR 6; Exhibit D, pp.2 and 1; Exhibit E, pp.1-2 and 3-4; Exhibit G; Exhibit H). The Union informed Respondent of these issues in its emails, and provided not only the Advice memo, but the prior Securitas Settlement Agreement as well, as evidence of its good faith position. This went beyond what was necessary, as the Advice Memo and the Securitas Settlement simply underscored the potential joint employer issue, despite Respondent's repeated mischaracterizations of the contents of those documents. The Judge so found. (JD 7:26-8:4; 8:15-19).

B. The Administrative Law Judge Properly Found That The Union Provided Explanations and Demonstrated Relevance by Articulating its Reasons for the Requests and by Supplying Respondent with Copies of the Settlement Agreement and Advice memo (Exceptions 5, 7,10, 11, 13)

Respondent does not dispute receipt of the documentation that the Union provided to explain the relevance of the requested information. As the Judge properly found, that information related directly to the Union's ability to intelligently and knowledgably negotiate for the Unit, including whether the Union should be jointly negotiating with two employers. (JD 8:20-24). Indeed, the requested copy of Respondent's contract with Bechtel related directly to Bechtel's relationship with

Respondent, as the Union knew that the Division of Advice for the Board had determined that the Respondent's predecessor and Bechtel were joint employers based on their contract providing the same security services. (JD 7:26-29). The Union also knew from the Advice Memo that its failure to ascertain the relationship between Respondent and Bechtel could have significant consequences in bargaining; the Union knew from the Advice Memo that it failed to ascertain the relationship between Respondent and Bechtel at its peril. (JD 8:1-4). In so finding, the Administrative Law Judge relied on established precedent (JD 8:10-19).

As the Judge properly found, Respondent at no time offered anything to counter the Union's showing of relevance. (JD 9:26-29). Notably, Respondent at no time claimed that the requested information was confidential, nor proffered any other legitimate reason to withhold the requested information. Further, Respondent proffered no evidence that the requested information was not relevant.

C. The Administrative Law Judge Properly Applied Existing Board Law (Exception 3, 5,6,7,9,10,11,12,13,14)

A union's right to receive relevant information when requested is so well-settled as to be axiomatic at this point. *NLRB v Detroit Edison Co.*, 440 U.S. 301 (1979); *NLRB v Acme Industrial Co.*, 351 U.S. 432 (1967). The Board applies a broad discovery type standard to information requests. *Acme Industrial*, 351 U.S. at 437. Information requests involving terms and conditions of employment of employees in the bargaining unit are presumptively relevant, and a union is not obligated to explain or demonstrate the relevance of the requested information. *Proctor & Gamble Mfg. Co. v. NLRB*, 603 F2d 1310, 1315-16 (6th Cir. 1979). Similarly, information necessary for a union to meet its statutory obligations and responsibilities, including negotiations with an employer, is

also presumptively relevant. *Pfizer, Inc.* 268 NLRB 916 (1984). A union may also be entitled to receive information that is not presumptively relevant, upon explaining the relevance to an employer. Pursuant to *Acme Industrial Co.*, the Union need only demonstrate a “probability” or “potential” that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities. 351 U.S. at 437. The Union is neither required to “justify,” nor prove to Respondent that the requested information is dispositive of the issue. *Pennsylvania Power and Light Co.*, 301 NLRB 1104,1105 (1991).

Moreover, where the employer should be well-aware of the relevance from the context and circumstances in which the request is made, a union is not required to spell out the relevance. *Brazos Electric Power Coop., Inc.* 241 NLRB 1016 (1979), *enfd. in rel. part*, 615 F.2d 1100 (8th Cir. 1980). Finally, the Union was not required to “justify” why it should receive the information; nor present dispositive evidence that the information must be provided: it need only show that it is relevant, or “potentially” relevant.

Despite Respondent having admitted in its Answer to the Complaint and in the Stipulations that the Union provided Respondent with copies of the Securitas Settlement Agreement (Exhibit G) and the Advice Memo (Exhibit H) to explain the relevance of the requested information (Exhibit C, p.3), it nonetheless claims that the Union did not provide it with any “justification” why Respondent was obligated to provide the requested information. The Administrative Law Judge correctly noted that Respondent’s chimeric contention that the Union had to overcome a “presumption of irrelevance” was a misapprehension of the law. (JD, n.8).

III. CONCLUSION

As the Administrative Law Judge properly found, Respondent violated §§ 8(a)(1) and (5) of the Act by failing and refusing to provide the requested relevant information, as alleged in the Complaint. Accordingly, the Board should affirm and adopt the Administrative Law Judge's findings of fact, conclusions of law and recommended Order.

Dated at Seattle, Washington this 6th day of May, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision was served on the 6th day of May, 2019, on the following parties:

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