

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

**TYD INDUSTRIES, LLC, d/b/a ATI SPECIALITY
ALLOYS AND COMPONENTS, MILLERSBURG
OPERATIONS**

and

**Cases 19-CA-227649
19-CA-227650**

**UNITED STEELWORKERS OF AMERICA,
LOCAL 6163**

**COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF
TO RESPONDENT'S EXCEPTIONS TO
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 (“General Counsel”) submits this Answering Brief to the Exceptions filed by TDY Industries, LLC d/b/a ATI Specialty Alloys and Components, Millersburg Operations (“Respondent”), to the September 25, 2019, decision of Administrative Law Judge Eleanor Laws (“ALJ”) in the above-captioned cases [JD(SF)-32-19] (“ALJD” or “Decision”).¹

I. OVERVIEW

All seventeen of Respondent’s exceptions to the ALJ’s findings lack merit, as they are not supported by the uncontested record evidence and misstate the ALJ’s findings of fact and law. As discussed in detail below, those factual findings and legal conclusions by the ALJ were appropriate, proper, and fully supported by the record evidence and established precedent. Accordingly, the Board should reject Respondent’s Exceptions in their entirety and sustain the ALJ’s decision and recommended order.

II. THE ALJ’S FINDINGS WERE PROPER AND SHOULD BE AFFIRMED

The ALJ appropriately determined that, based on the uncontested facts, Respondent’s failure to provide United Steelworkers of America, Local 6163 (“Charging Party”) with requested information related to death benefits was a violation of §§ 8(a)(1) and (5) of the Act. As discussed below, the arguments raised in Respondent’s exceptions are misplaced and do not warrant reversal of these ALJ findings.

¹ Respondent’s Brief in Support of its Exceptions will be referred to as (R. Br.), with citations to specific page numbers. References to the ALJD will be designated as (ALJD __:__), including appropriate page and line citations. References to the official transcript will be designated as (Tr. __:__), including appropriate page and line citations. References to the General Counsel’s, Respondent’s, and Charging Party’s exhibits will be referred to as (GC Exh), (R Exh), and (CP Exh), respectively.

A. The ALJ Properly Found that Respondent Unlawfully Failed to Provide Requested Information Relating to Death Benefits.

In arguing that the ALJ's findings are contrary to relevant Board precedent, Respondent misstates and misapplies the ALJ's factual findings regarding Respondent's failure to provide the requested information. Respondent is mistaken.

First, Respondent repeatedly asserts that the ALJ found that the confusion regarding the death benefits was not cleared up until the hearing. (R. Br. 1, 4, 11, 13, 15). What the ALJ actually found was that, "***at least by the time of the hearing***, the Respondent knew which death benefit was the subject of Watts' information request." (emphasis added) (ALJD 8:6-8). Thus, Respondent's assertions are disingenuous at best.

Second, Respondent argues that the ALJ's decision was contrary to established Board law because the ALJ found that the Charging Party did not meaningfully respond to Respondent's request for clarification about which death benefit the Charging Party was referring to in its information request. (ALJD 7:38-39). Although Respondent proffers Board law finding an employer does not violate § 8(a)(5) when a union fails to clarify an information request that the employer attempts to comply with, that case law is not controlling in this matter because of facts Respondent chooses to ignore. Namely, Respondent ignores that, as the ALJ correctly found, it later failed to respond, without any justification, to the Charging Party's follow-up request both for the names of the last 30 employees who had passed away ("the list") and the death benefit information once confusion had subsided. (ALJD 8:5-11).

The arguments concerning the list will be dealt with below. However, as to the death benefit information, contrary to Respondent's assertion, the ALJ found that, even if the Charging Party did not initially sufficiently clarify the information request given the extraordinary circumstances of the case, the information request was subsequently clarified to the extent that it required a response from Respondent. (ALJD 4:34-36, 7:38-39). Respondent's failure to respond to the information request *once it had been clarified* was the correct assessment as to the violation of the Act. (ALJD 8:8-11).

Third, as to Respondent's argument regarding its failure to provide the list being contrary to relevant Board precedent (R. Br. 15), it cites to *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344 (2012), for a tenuous connection to raise a due process concern. Essentially, Respondent attempts to argue that the Charging Party's request for the list was so far removed from the Charging Party's death benefit information request that Respondent had no idea it may be held liable for its blatant failure to respond to the request; therefore, the ALJ's decision should be overturned on due process concerns. (R. Br. 15). This argument is somewhat incomprehensible in light of Respondent's admission that the Board in *Piggly Wiggly* held that

[i]t is well settled that the Board may find and remedy a violation even in the absence of a specific allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated. Whether a matter has been fully litigated rests in part on "whether the respondent would have altered the conduct of its case at the hearing, had a specific allegation been made."

357 NLRB at 2345, citing *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d Cir. 1990). As the ALJ found and Respondent admits, the Charging Party's request for the list was directly connected to the subject matter of the

Complaint – the request for death benefit information.² (R. Br. 17-18, ALJD 4:34-36). Respondent's request for the list was part of its attempt to retrieve the death benefit information from the Employer. (ALJD 4:34-36).

Fourth, the uncontroverted record evidence establishes that the Charging Party met with Respondent on multiple occasions to attempt to figure out the best way to get the information on death benefits without unduly burdening Respondent. (TR 23:1-7; 25:5-14). This request, as Respondent admits, was a part of the Charging Party's initial death benefit information request and was made because, in the face of resistance from Respondent, the Charging Party was attempting to make it as easy as possible for Respondent to start collecting the information it needed. (R. Br. 17-18).

While this changed how the Charging Party and Respondent approached the information request, it in no way changed the overall nature or character of the information request and Respondent cannot argue in good faith that it was not on notice that it could be found liable for its failure to respond to the request. Respondent had a full opportunity to not only respond to Charging Party, but also to present evidence at hearing regarding its failure to provide this information. That it simply chose not to do so does not provide a sufficient basis for exception. Accordingly, the ALJ appropriately

² Since the request for the list was not a separate request for information as Respondent attempts to argue, it was therefore encompassed in both the Complaint and Decision as such. The request for the list was in fact specifically listed in the charge in Case 19-CA-227649, which, together with the charge in Case 19-CA-227650, form the basis for the Complaint and litigation in this matter. (GC Ex. 1 (a)). In fact, paragraph 6(b) of the Complaint specifically alleges that the Charging Party, by e-mail on September 5, 2018, renewed its request for information about the records of death benefits. (GC Ex. 1(e)). The September 5, 2018, email is a two-sentence email in which the Charging Party asks for the list. (GC Ex. 3). This email is part of the email string in which the Charging Party requests the death benefit information; there is only one email string on the subject and it encompasses the entirety of the parties' e-mailed communication about the matter. (GC Ex. 3). At hearing, the General Counsel presented specific testimony about the Charging Party's request for the list and Respondent's failure to respond to that request. (TR 29:21-30:8)

related the Charging Party's request for the list as a follow up to its broader request for death benefit information, and that Respondent's failure to respond to the follow up constituted a violation of the Act. (ALJD 8:5-9)

In sum, Respondent's exceptions to the ALJ's finding that Respondent violated §§ 8(a)(1) and (5) of the Act by failing to provide the Charging Party with the list and the rest of the death benefit information once confusion subsided are all without factual or legal foundation. The exceptions are based on circular arguments that ignore the progression of the ALJ's findings, all of which are based on the uncontested record and appropriate legal precedent.

B. The ALJ Properly Found that Respondent Unlawfully Delayed in Providing Requested Information Relating to Michael Marthaller's Qualifications

The ALJ appropriately determined that, based on the uncontested facts, Respondent's delay in providing the Charging Party with requested information related to Michael Marthaller's ("Marthaller") qualifications was a violation of §§ 8(a)(1) and (5) of the Act. As discussed below, the arguments raised in Respondent's exceptions are misguided and do not warrant reversal of these ALJ findings.

First, Respondent contends that it rebutted the presumption of the information's relevance. It did not. As the ALJ correctly ascertained, the standard for determining relevance when the requested information does not concern subjects directly pertaining to the bargaining unit is if the information has "some bearing upon" the issue between the parties and is "of probable use to the labor organization in carrying out its statutory responsibilities." (ALJD 7:10-14, *citing Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014); *Postal Service*, 332 NLRB 635, 636 (2000)). Using the appropriate

legal standards, the ALJ properly determined that the information at issue, qualifications of a newly hired bargaining unit employee, directly related to a grievance filed by the Charging Party alleging that Respondent had denied promotional opportunities to existing bargaining unit employees by hiring underqualified employees from outside to perform machining duties. (ALJD 8:15-18).

Respondent attempts to argue that the collective bargaining agreement between the parties only allows for the Charging Party to dispute or grieve Respondent passing on qualified internal candidates. According to Respondent, it does not give the Charging Party a right to dispute or grieve the qualifications of outside candidates who were hired. Even assuming *arguendo* that this is true, which Respondent failed to establish, the ALJ still correctly held that the qualifications of externally hired candidates were relevant to the Charging Party's grievance alleging that Respondent passed over internal candidates. (ALJD 8:15-18). The qualifications of external hires have a significant bearing on whether the internal candidates were in fact qualified for the positions, and this information would clearly be of use to the Charging Party in the processing of the grievance. Any argument that this information does not meet the low bar for relevancy is farcical.

Respondent also alleges that the ALJ failed to consider evidence that the parties had agreed to narrow the scope of the information request. The record evidence, however, does not support such a finding. Respondent bore the burden of proving this affirmative defense and completely failed to do so; it did not even attempt to establish corroborating evidence from one witness it proffered to establish that. (TR 107:16-110:13). In addition, the Charging Party denies that it ever made such an agreement.

(TR 87:12–88:19; 140:11-16). Therefore, the ALJ properly did not simply rely upon Respondent’s assertion regarding the narrowed scope of the information request; she made a proper finding based on both the weight of the evidence (as well as lack of corroborative witnesses produced) and the credibility of those produced. (ALJD 9:5-13). Since the record evidence establishes that the ALJ’s findings are well-founded, the Board should leave her credibility determinations untouched. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.*, 188 F.2d 362 (3d Cir. 1951 (Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of the evidence dictates they are incorrect).

Respondent further alleges that the ALJ erred in failing to consider that it provided the information soon after the Charging Party and Respondent allegedly agreed to narrow the scope of the information request. As discussed above, Respondent failed to establish that the parties ever made such an agreement. Furthermore, the ALJ, distinguishing Respondent’s citations, properly found that the Charging Party was not required to wait for a meeting with the Respondent to discuss its concerns and was not required to narrow its very basic request, particularly in light of the fact that the information requested was neither complex nor voluminous. (ALJD 9:12-13). The ALJ appropriately rejected these and other similar arguments raised by Respondent, and nothing raised in Respondent’s Exceptions warrants a different conclusion.

III. CONCLUSION

Based on the foregoing, it is respectfully submitted that the Board should deny Respondent's Exceptions and affirm that Respondent violated §§ 8(a)(1) and (5) of the Act by failing to provide the Charging Party with information regarding death benefits and delaying in providing the Charging Party with information regarding Marthaller's qualifications.

DATED at Portland, Oregon, this 6th day of November, 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 Administrative Law Judge's Decision was served on the 6th day of November, 2019, on the following parties:

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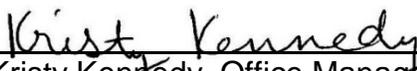
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