

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**UNITE HERE LOCAL 1  
(HYATT REGENCY CHICAGO)**

**Cases 13-CB-217959  
13-CB-220319  
13-CB-228165**

**Respondent**

**And**

**HYATT REGENCY CHICAGO**

**Charging Party**

**COUNSEL FOR THE GENERAL COUNSEL'S  
ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Counsel for the General Counsel ("General Counsel") submits this Answering Brief to the Respondent's Exceptions to Administrative Law Judge ("ALJ") Christine E. Dibble's September 26, 2019, Decision and Order. General Counsel relies upon the Statement of the Case and accompanying factual findings as set forth in ALJ's Decision ("ALJD") and the record of the hearing in this matter which clearly demonstrates that Respondent's Exceptions are without merit and must be dismissed<sup>1</sup>. Since Respondent does not challenge the ALJ's factual findings or conclusions regarding the Section 8(b)(3) violations, the only issue for the Board's determination is whether the ALJ properly entered an appropriate Order and remedy, including an extraordinary remedy requiring training for Respondent's officials.

While the Respondent argues the extraordinary remedy should be eliminated, Respondent's recidivist behavior requires this extraordinary remedy—specifically,

---

<sup>1</sup> Counsel for the General Counsel does not object to Respondent's Exception 5 which alleges that the ALJ mistakenly references to a "settlement agreement" rather than her own Order when referring to the mandatory training remedy. This error appears in the ALJ's Order on ALJD 37: 11-12, 15, 31-33, and 35. Since there is no settlement agreement, the correct wording should reference the ALJ's "Order".

Respondent's history requires tougher relief than what is typically awarded in information request cases. In this regard, the evidence showed that Respondent has entered into two prior settlements in Case Nos. 13-CB-176744 and 13-CB-196675, wherein the most recent included an admissions clause. (ER Exs. 5 and 6; T. 373-375) However, even after admitting violating the Act in these earlier cases, Respondent as correctly found by the ALJ in the instant matter, continued to engage in the same type of unlawful behavior in violation of the Act by, inter alia, continuing to respond to the Employer's information requests by simply repeating what was already found in the grievance or not providing the information at all.

Where, as here, a Respondent exhibits a pattern and practice of purposely failing and refusing to provide or delaying in providing timely information to the charging party and, by its own admission, shows a proclivity to violate the Act, additional affirmative relief should be awarded. Despite Respondent's assurances in similar prior agreements that it would timely respond to the Employer's information requests the Respondent has continued its unlawful pattern of refusing to comply with the Employer's information requests. (ER Exs. 5 and 6) This instant consolidated complaint demonstrates the Respondent still has no intention of complying with its information disclosure obligations if a traditional remedy is awarded. Accordingly, the ALJ's extraordinary remedies, including requiring Respondent to train its officials and representatives on how to adequately respond to the Employer's information requests is warranted in this case.

**I. THE MORE EXTENSIVE REMEDIES ARE NECESSARY TO ENSURE COMPLIANCE**

**A. The ALJ did not err in imposing an extraordinary remedy (Respondent's Exception 1)**

Recognizing that a broad remedial order is an extraordinary remedy, the Board has held that such remedy is “warranted only when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights.” *Hickmott Foods*, 242 NLRB 357 (1979). Requisite disregard for employees' rights may be demonstrated where, for example, section 8(a)(1) violations have occurred prior to or concurrently with a discriminatory discharge, *id.*, or where an employer's conduct “goes to the heart of the Act,” *Florida Steel Corp.*, 223 NLRB 174, 175 (1976), by burdening or interfering with workers' section 7 rights. Here, as evident by the Respondent Union's repeated violations of Section 8(b)(3) over the last three years, the Union has engaged in persistent misconduct relating to its bargaining obligations with the Employer<sup>2</sup>.

Respondent argues that the evidence did not demonstrate that an ordinary remedy, i.e., merely ordering them to post and comply with a notice that required Respondent to provide the requested information would be insufficient. Respondent's argument is flawed. The evidence overwhelmingly shows a long-standing pattern of Respondent failing to timely respond to the Employer's relevant grievance information requests. The most recent violations from about October 9, 2017, through about June 29, 2018, overlap with Respondent entering into an

---

<sup>2</sup> For example, Respondent has executed two settlements promising to timely provide the Charging Party with relevant requested information. ER. Exs. 5 and 6. In fact, in the most recent, Respondent admitted that its conduct violated the Act. ER Ex. 6

informal settlement on March 6, 2018 in Case No. 13-CB-196675 and closed by the Region on August 7, 2018. In that settlement, the Respondent agreed to an admissions clause admitting it violated the Act and further agreed that: “(Respondent) WILL NOT refuse to provide Hyatt Regency Chicago with requested information that is relevant and necessary to the processing of grievances filed by the Union.” Respondent clearly has demonstrated a proclivity to violating the Act by its glaringly consistent refusal to furnish relevant information requested by the Employer. As such, the extraordinary remedies ordered by the ALJ are wholly appropriate.

**B. The Record fully supports the ALJ order requiring training for Respondent’s officials (Respondent’s Exceptions 2 and 4)**

Respondent argues that there is no precedent, adequate justification from legal authority, or record evidence for ordering a respondent’s officials to undergo training in responding to information requests as a remedy. However, there have been several recent cases requiring substantially similar remedies. In *HTH Corp.*, 361 NLRB 709 (2014), the Board ordered that supervisors, and managers would receive additional, direct instruction as to their responsibilities under the Act. The Board in that case found that such instruction was clearly necessary, in light of (1) the supervisors’ and managers’ significant involvement in carrying out the respondents’ unfair labor practices; and (2) the culture of union animus that the Respondent facilitated and encouraged over the previous decade. The Board added that Respondents’ violations in that case were unquestionably deliberate, targeted, and egregious, as were Respondent Union’s actions in the instant matter. Specifically, in this case, each of Respondent’s Union officials were undeniably dismissive when refusing to provide the requested relevant information by repeatedly giving the same canned refusals, “you can’t be serious” or this “is all the information we have” when it was later discovered they possessed the information all along. ALJD 6: 8-10 and 19; 7:

13-15; 13: 14-15; 25: 12-14 and 31-34; 26: 23-24; 28: 14-20; 32: 10-16 and 27-30; 33: 15-16 and 20-31; GC Ex. 3c at 1-2

In the instant case, record evidence clearly demonstrated that the ALJ was justified when ordering the mandatory training. For example, Respondent's production of the intake forms during its case-in-chief shows Respondent, by its own admission, had proven it did in fact possess additional information beyond what it disclosed to the Employer. At trial Respondent contradicted their responses to the information requests and testimony by stating that it had provided the Employer all information in its possession. ALJD 28: 37-39. The ALJ pointed out that an intake form relating to grievance number 20180822 revealed: the initial of the supervisor that allegedly "yelled" at the grievant; and a detailed narrative of the events which included names and other facts not in the grievance submitted to the Employer<sup>3</sup>. The ALJ correctly found that if the Employer had received, at minimum, the grievance intake form it would have had a better understanding of the basis of the grievance thereby allowing the Employer to: "conduct a more fact specific investigation in order to corroborate or dispute the claim; assess whether settlement was appropriate; and assess its likelihood of success in arbitration". ALJD 33: 18-27. In reference to the Employer's request for information dated January 31, 2018, for grievance number 20180153, the ALJ correctly noted Respondent had a "plethora of information" when it received the Employer's request but nevertheless refused to give the Employer the information. ALJD 31: 6-9.

The record further showed that Respondent withheld information which was not privileged at all, i.e. the names of witnesses, a description of the specific job classification at issue, picture of a text message. ALJD 30: 35-37; 32: 7-10. When Respondent failed to provide

---

<sup>3</sup> U. Ex.20

the requested information based on privileged documents, it continuously failed to provide privilege logs and/or failed to bargain with the Employer over an accommodation to resolve the Respondent's privilege claim. ALJD 24: 12-14; 29: 40-41. The ALJ repeatedly found that Respondent failed to completely respond to the information requests and did not have a legally justifiable reason for its actions. ALJD 32: 21-23 and 30; 33: 20-21 and 31-35; 34: 4-5, 21-22, and 32-33; 35: 9-11.<sup>4</sup> The record is replete with evidence as to why the extraordinary remedy of training officials is imperative. Based on its abysmal track record in complying with its statutory obligations, including not complying with previous settlement agreements, and to ensure that Respondent provides complete responses not only for the grievances at issue in this case, but also grievances in the future, traditional remedies are simply not appropriate. Rather, the extraordinary remedies ordered by the ALJ and to which Respondent now excepts are not only necessary but mandated to assist Respondent in understanding what is clearly required of it under the Act .

**C. The ALJ properly required Respondent's officials to acknowledge in writing that they have attended the training (Exception 3)**

The assertion by Respondent that this "personal pledge" remedy is both unnecessary and humiliating is without merit. At issue in this case are nineteen information requests that stem from three unfair labor practice charges. By virtue of the multiple information requests made by the Employer to the Respondent regarding Respondent's vague grievance filings, to which the Respondent's boilerplate response was "you can't be serious", record evidence clearly demonstrates that this remedy is required. ALJD 6 ft. 6

---

<sup>4</sup> As previously noted, Respondent has not excepted to any of the ALJ's findings of facts.

The record showed that several of Respondent's officials were involved in responding to the Charging Party's information requests, former Organizer Sara Foran, Contract Enforcement Representatives Rachael Brumleve, Fatima Jurado, and Matt Walsh to name a few. These different officials repeatedly sent a standard refusal and asserted several different defenses, including that the requests were issued in bad faith, were burdensome, that Respondent did not possess the information sought, and that Respondent had no duty to conduct investigations and/or to provide the information in a specific form. ALJD 3: 1-9; 13: 27-28; 24: 19-22 and 41-46; 25: 6-46; 26: 14-15 and 39-40. The ALJ correctly found all of Respondent's defenses unconvincing.

The ALJ also noted in one instance that Respondent through Brumleve stated Respondent did not have the information requested and did not believe it was reasonable for Respondent to go and gather that information at this time. ALJD 11: 11-14 In addition, Brumleve never explained in her testimony why for over six months she ignored four separate requests from the Employer seeking a copy of the grievance. T. 858-61. Rather, Brumleve conceded "Mr. King had not been advised by the Union that the grievance was not opened" at the time she submitted a grievance settlement proposal to the Employer. T. 1000, 1040. Yet the grievance appeared on the Union's list of open grievances (GC Ex. 10c) and Brumleve conceded that the process used by Respondent to advise the Employer when a grievance was open or closed was to provide a list of all open grievances. T. 861. Grievances not appearing on the list were considered closed. *Id.*

In yet another example, Respondent had the requested information available but purposely refused for months to produce it to the Employer. In this regard, record evidence demonstrated that the requested information was actually prepared at or near the date of the alleged infraction (i.e., October 7, 2017, and February 28, 2018) yet was not provided to the Employer until April 12, 2018. Respondent never offered any explanation regarding why it failed

to timely produce this information. ER. Exs. 27a and b These examples typify Respondent's unlawful conduct in behaving dismissively and carelessly when responding to the Employer's legitimate requests for information, further demonstrating the need for the ordered extraordinary remedies.

In addressing Respondent's refusal to provide information based on its assertion that the Employer's requests were made in bad faith, the ALJ correctly found that Respondent's defense was "unpersuasive" and "not supported by the evidence". ALJD 25: 16-20; 27: 33-36. In addition, the ALJ correctly held that Respondent had not satisfied its burden of showing that it did not have to respond to the requests for information because it did not have the answers and the requests were burdensome. ALJD 28: 7-11 The ALJ properly found that there was only the Respondent's subjective opinion that the requests for information were voluminous. ALJD 25: 44. Moreover, Respondent has not established that the burden of complying with the requests outweighs the Employer's need for the information. Accordingly, the ALJ properly found that Respondent's officials needed to be trained and be required to acknowledge and understand that they would not in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation of the ALJ's Order. ALJD 37: 31-35. Thus, in view of Respondent's repeated flippant and uncooperative responses, the ALJ properly ordered that traditional remedies in this case were not sufficient to address Respondent's violations of the Act. Accordingly, this acknowledgement by Respondent's officials is an appropriate remedy to ensure Respondent timely provides necessary and relevant information when requested.

**D. The ALJ did not err in requiring that Respondent provide responses to information requests about grievance that have been resolved (Exception 6)**

While Respondent argues that some of the grievances which underlie the various information requests at issue in the instant matter have been resolved and therefore the

information requested has no current relevancy, the ALJ correctly ordered that the requested information still be provided. In *Chapin Hill at Red Bank*, 360 NLRB 116 (2014), the Board affirmed the ALJ and held that information requested was not rendered moot by the resolution of a grievance and was still necessary and relevant to enable the Union to discharge its statutory bargaining function of administering the contract. The Board added that the requested information had present and continuing relevance for the Union to police the parties' collective-bargaining agreement. Similarly, in this case, the Respondent's continuous refusal to produce portions of the requested relevant information until arbitration proceedings were well under way should not render the Employer's requests moot.

The ALJ correctly noted that the need for the requested information not only restricted the Employer's ability to conduct thorough and meaningful investigations of grievances but it also affected the Employer's ability to resolve grievances. ALJD 27: 31-33 While the parties did settle several grievances, the evidence is clear that Respondent's failure to timely furnish the information requested by the Employer was a significant factor in the Employer's inability to adequately prepare for arbitration and inability to quantify the financial exposure posed by the pending grievances. T. 98, 401-404. The Employer is still entitled to this information as it was never able to decipher in some instances why the Respondent was claiming there was a grievance violation. T. 242 The Employer cannot take corrective action and prevent future grievances if it is unaware of what the contract violations were. T.399-400, 412-13. This persistent issue cannot be remedied unless and until the Employer is notified of the type of error. T. 469.

## II. CONCLUSION

Based upon the foregoing, Counsel for the General Counsel respectfully requests that the Board dismiss the Respondent's exceptions and affirm the ALJ's Order and Remedy, including posting of the proposed Notice attached hereto, and any other remedy deemed appropriate and just under the law (*see* Appendix).

Respectfully Submitted,

/s/ *Elizabeth S. Cortez*

Elizabeth S. Cortez

Counsel for the General Counsel

National Labor Relations Board, Region 13

219 South Dearborn St., Ste. 808

Chicago, IL 60604

Dated: November 27, 2019 at Chicago, IL

## Appendix

**OBLIGATION TO PROVIDE TRAINING** — The Charged Party will conduct two mandatory in-person training sessions for all current organizers and representatives of UNITE HERE Local 1, who are responsible for responding to information requests made by Hyatt Regency Chicago, regarding the requirement to timely provide necessary and relevant information to the Hyatt Regency Chicago upon its request. Such training shall include providing to each attendee a copy of this Order and the attached notice to employees, and written instructions stating that:

- UNITE HERE Local 1 and its organizers and representatives are required, pursuant to an Order of the National Labor Relations Board, to comply with the appended Notice to Employees;
- Incomplete or inadequate responses, unprivileged or unwarranted refusals, and unreasonable delays in supplying information required to be provided to Hyatt Regency Chicago shall not be tolerated by the UNITE HERE Local 1;
- If the Union claims any information responsive to a request for information from Hyatt Regency Chicago is privileged or confidential, it must notify Hyatt Regency Chicago of the basis of its position and seek to bargain an accommodation to provide the information in a manner that protects its confidentiality interests;
- If the Union claims any other lawful basis for withholding information responsive to a request for information from Hyatt Regency Chicago, it must notify Hyatt Regency Chicago and state the basis for its position;
- If, after a diligent search, the Union finds that requested information does not exist, or is not capable of being produced, the Union must respond to the request by saying so within a reasonable time.

Each person receiving training pursuant to this Order shall acknowledge in writing that he or she has attended the training and has been furnished with a copy of this Order, the notice to employees, and written instructions, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone, by action or inaction, any violation of this Order.

The Charged Party will notify Region 13 in writing within ten (10) days of conducting each training session and provide a list of attendees and the instructor at each session.